

UNITED STATES OF AMERICA
 NATIONAL TRANSPORTATION SAFETY BOARD
 OFFICE OF ADMINISTRATIVE LAW JUDGES

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In the matter of:

PUBLIC HEARING ON COLLISION OF
 TWO WASHINGTON METROPOLITAN AREA
 TRANSIT AUTHORITY TRAINS NEAR
 FORT TOTTEN STATION, WASHINGTON,
 D.C., JUNE 22, 2009

* * * * *

NTSB Board Room and Conference Center
 490 L'Enfant Plaza
 Washington, D.C. 20024

Wednesday,
 February 24, 2010

The above-entitled matter came on for hearing, pursuant
 to Notice, at 8:00 a.m.

BEFORE: BOARD OF INQUIRY
 National Transportation Safety Board (NTSB)

APPEARANCES:

Board of Inquiry

ROBERT SUMWALT, Chairman
JAMES RITTER, Acting Director, Railroad, Pipeline and
Hazardous Materials Investigations
JOSEPH KOLLY, Director, Research and Engineering
ED DOBRANETSKI, Hearing Officer/Investigator-in-Charge
GARY HALBERT, General Counsel

Technical Panel

STEVE KLEJST, Operations/Oversight
RICK DOWNS, Crashworthiness
CY GURA, Track/Engineering
RUBEN PAYAN, Signal and Train Control
RICK NARVELL, Human Performance
DANA SANZO, Survival Factors
DAVE WATSON, Mechanical
PAT SULLIVAN, Safety Recommendations
JAMES SOUTHWORTH, Chief, Rail Division
MARK JONES, Deputy Chief, Rail Division

Interested Parties

MICHAEL TABORN
Washington Metropolitan Area Transit Authority (WMATA)

MICHAEL FLANIGON
Federal Transit Administration (FTA)

THOMAS McFARLIN
Federal Railroad Administration (FRA)

ERIC MADISON
Tri-State Oversight Commission (TOC)

NEAL ILLENBERG
Alstom Signaling, Inc.

ROBERT PASCOE
Union Switch and Signal Inc.

LAWRENCE SCHULTZ
Washington D.C. Fire and EMS Department

APPEARANCES (Cont.):

Interested Parties (Cont.)

JACKIE JETER
Amalgamated Transit Union

Also Present

DEBORAH HERSMAN, Chairman, NTSB
CHRISTOPHER HART, Vice Chairman, NTSB
ELIAS KONTANIS, Office of Transportation Disaster
Assistance
BRIDGET SERCHAK, Public Affairs Specialist, Office of
Public Affairs
NANCY MASON, Administrative Support
DENISE WHITFIELD, Administrative Support

Witness Panel 2

HARRY HEILMANN, Retired, Former Assistant Chief
Engineer/Project Manager, WMATA
DAVID KUBICEK, Assistant General Manager, WMATA
MIKE HILLER, Chief Vehicle Engineer, WMATA
ALAN G. NABB, Superintendent, Communications, WMATA

Witness Panel 3

ERIC MADISON, Transportation Planner, TOC
MATTHEW BASSETT, Manager, Safety, Security and
Emergency Preparedness, TOC

Witness Panel 4

BRIAN CRISTY, Director
Transportation Division
Massachusetts Department of Public Works

GRACE GALLUCI, Deputy Executive Director
Research, Analysis and Policy Development
Regional Transit Authority (Illinois)

RICHARD CLARK, Director
Consumer Product and Safety Division
California Public Utilities Commission

APPEARANCES (Cont.)

Witness Panel 4 (Cont.)

GEORGETTE GREGORY, Program Manager
Rail Transit and Crossings Branch
California Public Utilities Commission

ERIC MADISON, Transportation Planner,
Tri-State Oversight Committee

Witness Panel 5

MICHAEL FLANIGON, Director
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JOHN LEEDS, Director
Office of Safety Analysis, FTA

ED PRITCHARD, Director
Office of Safety Assurance and Compliance, FTA

WILLIAM GRIZARD, Director
Safety, American Public Transportation Assoc. (APTA)

KATHY WATERS, Vice President
Member Services, APTA

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P R O C E E D I N G S

(8:04 a.m.)

CHAIRMAN SUMWALT: Good morning. And we are back in session and yesterday we left off with the Technical Panel, so this morning we will resume questions with the Technical Panel.

Mr. Payan.

MR. PAYAN: Thank you, Mr. Chairman. I have one last topic to discuss and I think Mr. Heilmann might be the best person to answer this.

CHAIRMAN SUMWALT: And excuse me. And the audio booth, if we could get a little more audio on that mic, please. Thank you.

MR. PAYAN: My last topic was an update on the urgent recs that were issued as a result of the Fort Totten collision.

CHAIRMAN SUMWALT: And excuse me. I apologize for once again interrupting you. Our general counsel has asked me to remind the witnesses that you are, at this point, still under oath. So thank you for that.

MR. PAYAN: So an update to the urgent recommendations that were issued as a result of the Fort Totten collision.

MR. HIELMANN: As an update, do you mean what has been done since the urgent recommendations?

MR. PAYAN: Yes.

MR. HIELMANN: Okay. The first urgent recommendation was 09-6 on July 13th, and since that time, actually before that

1 time, on June 30th, WMATA began a major decision to convert our
2 manually operated loss of shunt tool to an automated central
3 control alarm system and that's not completed yet. But we started
4 looking into the feasibility of that on June 30th, and on July 2nd
5 we met with ARINC to discuss the feasibility of including it in
6 the AIM software, which is what we use on our central control
7 computer.

8 Two weeks later the urgent recommendation came out and
9 then, in a second meeting with ARINC, it appeared that we had the
10 best people to work on the loss of shunt tool at the ARINC staff
11 had problems with their own, so we limited their scope to
12 enhancing the selectivity, that is, reducing false alarms in their
13 own non-reporting block alarm within the AIM software, and also
14 that was about -- and also we had the -- and their scope of work
15 to include track circuit IDs on playback of the central control
16 computer system.

17 In November, we began sending real-time alerts from loss
18 of shunt tool within two minutes of an event, and when I say an
19 event, the loss of shunt tool has a number of false alarms, mostly
20 false alarms, because it's time-based on track circuit
21 occupancies. The loss of shunt tool is looking at ones and zeroes
22 in a computer, not track circuits, and the timing of those data
23 points is what determines if we potentially have an alarm or a
24 problem with the track circuit. So in November, we began sending
25 the real-time alerts from that system to my BlackBerry and to the

1 programmer's computer.

2 The false alarms were on the range of one false alarm
3 per minute during peak service hours. We can't turn an alarm like
4 that over to the user group yet, so we had to refine that. We
5 made improvements in the algorithm so that we've reduced the
6 number of false alarms, but still it's very high and the false
7 alarms are known data anomalies with the timing and the data that
8 we have to correct for.

9 Once we have the false alarms reduced to the point that
10 they're very rare, then we'll be incorporating this into central
11 control's information as an alarm, and then central control can
12 make the call for responding to one of these alarms, and whether
13 that requires an absolute block right away or maintenance to go
14 out and shut down a track circuit, what have you. As Mr. Kubicek
15 said, the development of this alarm looks promising for
16 implementing in central control by the end of the calendar year.

17 The second urgent recommendation is 09-15 on
18 September 22nd. Through August and September, WMATA developed a
19 test procedure -- myself and two of my staff developed a test
20 procedure for testing for the parasitic oscillations, and in
21 October we vetted through also two iterations. They commented on
22 the first iteration and said no comment on the second iteration.
23 We trained maintenance staff to go out and perform the tests, and
24 then by the middle of December we had completed testing all track
25 circuits within WMATA, for the parasitic oscillations.

1 The third recommendation, which was not an urgent
2 recommendation, was 09-16 on September 22nd, and we already had in
3 place, as you know from earlier testimony, a periodic maintenance
4 program. But after that recommendation, we evaluated our program
5 and we decided on six additional tests that we were adding to the
6 program. Those are in draft and field trial versions now. One is
7 the receiver band pass filter output measurements during the
8 verification of a track circuit.

9 When we verified a track circuit it was a pass/fail,
10 go/no go test, if you will. If the relay went down, then it
11 passed. If the relay didn't go down, it didn't pass. But we're
12 going to add a measurement in there of the signal strength when
13 that test is performed. That will tell us more about the track
14 circuit when we're doing out preventive maintenance. We are going
15 to be checking on the oscilloscope for the electronic signature
16 during our preventive maintenance of a corrugated rail section. I
17 hadn't talked about that before. That's one of the conditions
18 that affects the loss of shunt tool performance right now.

19 The rail can get corrugations in the top of it that
20 cause noise, but even in the small corrugations that are not --
21 that do not fail track standards, they cause electronic noise
22 because of sparks between the wheels and the running rail. And we
23 have documented that with video. But we want to have the
24 maintainers looking for that signature on the oscilloscope when
25 they're performing their PM.

1 The next thing is that we've added an open bond line
2 test because track circuits -- certain types of track circuits can
3 increase in amplitude on their transmitter to the point that they
4 cause a false vacancy of another track circuit. And this happens
5 if a waveshaper board that's on the module has failed, and this
6 test will verify that that waveshaper board is properly working.

7 We've added to the periodic maintenance a test for
8 parasitic oscillations and a test to check for crossover
9 distortion on the audio signal going out of the module, and
10 finally, a verification that the input signal to the receiver of
11 the track circuit does not exceed the manufacturer's recommended
12 maximum. We did add a warning to the verification shunt
13 procedure, that a track circuit that has a bobbing status cannot
14 be verified; it has to be correctly repaired first before it can
15 be verified. And that I know about the things that we've done
16 since the urgent recommendations and the other recommendation.

17 MR. PAYAN: Thank you. Can you or Mr. Nabb -- you
18 mentioned that track circuits were tested on WMATA systems. Can
19 you or Mr. Nabb provide a number of how many exhibited the same
20 parasitic oscillations that were found at Fort Totten?

21 MR. NABB: Yes, there were a total of eight circuits.

22 MR. PAYAN: And those have been corrected?

23 MR. NABB: Those have all been corrected.

24 MR. PAYAN: Okay. Now, the other area that you talked
25 about, OCC, do you know if any work has been done regarding the

1 alarms that the controllers get?

2 MR. HIELMANN: I know that ARINC made some enhancements
3 to the failed vacant alarm. We have not provided the loss of
4 shunt tool alarm, if that's what you're referring to. And as far
5 as the other alarms schemes, I can't speak to that. That would be
6 Mr. Kubicek.

7 MR. PAYAN: Yes, I'm talking particularly about the
8 priority and the self-acknowledging alarms. Were there any
9 changes as far as when a track circuit fails vacant?

10 MR. KUBICEK: We are in the process of working with
11 ARINC to reestablish our prioritization inside our control center.
12 Beforehand, everything was put on the controller or our
13 maintenance of operations control center. One of the things that
14 we have done since the incident is that we physically realigned
15 staff towards we have our controllers in the front, our
16 maintenance of operations controllers in the secondary level, so
17 that way we have improved communications, you know, between them.

18 And then the other component that we're working on ARINC
19 is the understanding of who gets what signals, and that's an
20 ongoing process. We also began the process of troubleshooting of
21 these nuisance alarms, understanding why they were creating, you
22 know, so much -- they were populating the log so much. And so
23 there were some adjustments on that and we've been in the process
24 of steadily reducing the number of alarms as well as
25 prioritization of that. And through the loss of shunt process, as

1 we work through that, that'll be the final stamp on how we totally
2 reconfigure everything, you know, for this next process as to
3 whether we evaluate our train control system and our controllers
4 are utilizing the alarms on the railroad.

5 MR. PAYAN: Thank you. Now, my last question, the loss
6 of shunt tool, how often is that being reviewed right now?

7 MR. KUBICEK: It's being conducted twice a day. Each
8 time is after peak period and that includes the weekends.

9 MR. PAYAN: And time-wise, how much of a chunk of data
10 is being figured?

11 MR. KUBICEK: We're taking about three hours.

12 MR. HIELMANN: Actually, if I may, we changed that a few
13 weeks ago and increased it to 24-hours-a-day coverage.

14 MR. PAYAN: The review of the data?

15 MR. HIELMANN: The data is reviewed twice a day and each
16 time it's reviewed, the data includes everything back to the last
17 review, so we're recovering 24 hours.

18 MR. PAYAN: Okay, thank you. Mr. Chairman, that's all
19 the questions I have.

20 CHAIRMAN SUMWALT: Thank you. And I believe, Mr. Downs,
21 you are next from the Technical Panel; is that correct?

22 MR. DOWNS: That's correct, thank you, sir.

23 CHAIRMAN SUMWALT: Thank you, sir.

24 MR. DOWNS: Good morning. My topic will be passenger
25 car crashworthiness and I believe Mr. Hiller's going to be -- is

1 probably the most qualified to address most of these.

2 NTSB investigation of a Shady Grove collision in 1996
3 identified some shortcomings relative to crashworthiness of
4 WMATA's car body design and issued a safety recommendation on
5 this, which was closed acceptable action a few years later. I
6 want you to briefly summarize for us what WMATA has done to
7 improve railcar crashworthiness since that investigation and the
8 progression from the 1000 Series to the 7000 Series cars.

9 MR. HILLER: Yes, sir. First of all, I just want to
10 discuss railcar crashworthiness in its defined sense, and this is
11 from the ASTM RT-2 definition of crashworthiness, and essentially
12 it's the ability of a car body to manage the energy in a collision
13 while maintaining its structural integrity so to minimize the
14 injury to the occupancy. The 1000 Series cars were designed back
15 in the 1970s to standards that were consistent with what industry
16 was doing back then. Crash worthiness was not a part of the
17 fundamental design. Collision posts and corner posts were
18 structural elements used to prevent things like override, anti-
19 climbers and energy absorbing couplers.

20 When we went into the twos and the threes and the fours,
21 you could see that some strengthening did take place. But again,
22 these were rigid members. They were not really crash worthy. And
23 to summarize, I guess, as a result of the 1996 recommendation by
24 the NTSB, WMATA incorporated CEM, or crash energy management, into
25 the 5000 Series technical specifications, and that's how the car

1 is out there rolling today. The 5000 Series uses an energy
2 absorbing coupler in the front. It uses an energy absorbing anti-
3 climber in the front. Once these controlled deformations take
4 place, then we get into actual collapsible elements into the front
5 end, and the front end is capable of absorbing up to 1.5 mega
6 joules of energy. Now, this is rather -- this is kind of higher,
7 somewhat higher than what ASTM RT-2 is currently recommending as
8 an energy absorbing requirement.

9 The 6000 Series, it evolved in such a way where it used
10 -- instead of an aluminum understructure like the 5000, it used
11 LAHT, and this is a steel. It also incorporated some absorbing
12 members up in the roof structure as well.

13 Now, as we look forward to the 7000 Series and its
14 crashworthiness, we're taking the lessons from the 5000s and we're
15 talking the lessons from the 6000s. Along with that, we're
16 incorporating a stainless steel structure and the stainless steel
17 structure is a more robust structure and the modeling, I
18 anticipate, will show that we'll have a long-lasting crashworthy
19 vehicle.

20 In addition to the crashworthiness, the interior
21 accelerations, which is where injuries occur with passengers,
22 we're going to act to minimize those. We're going to utilize
23 things like higher seat backs and angles that have been shown with
24 HIC testing to minimize head and neck injuries.

25 Did I answer your question?

1 MR. DOWNS: That pretty much addresses it in summary,
2 thanks.

3 MR. HILLER: Thank you.

4 MR. DOWNS: Just a couple of corrections, I think. I
5 think you referred to ASTM and I think you might've meant ASME.

6 MR. HILLER: Thank you, I did.

7 MR. DOWNS: Great. What's WMATA's methodology for
8 verification of these crashworthiness improvements?

9 MR. HILLER: Our specification requires testing and the
10 testing requires a one-dimensional lump mode analysis. It also
11 requires a non-linear advance software analysis to demonstrate
12 that the car manufacturer has met its requirements, and WMATA
13 also, in the 5000 Series, required a dynamic sled test to prove
14 that the design did meet its requirements.

15 Also physical members, such as elements that are
16 involved in the controlled collision, the crashworthy elements
17 themselves, those were physically tested and the physical test
18 must show that the energy is a consistent -- it will be consistent
19 through its deformation. So we just don't want to see sort of
20 spikes and things like that. So we just want a nice consistent
21 deformation. So those are the requirements that are in the 5, the
22 6s, and soon to be 7s.

23 MR. DOWNS: So it sounds like there's a combination of
24 computer modeling as well as physical testing?

25 MR. HILLER: Yes, sir, a combination of computer

1 modeling and physical testing.

2 MR. DOWNS: Okay, great, thank you. It also sounds that
3 -- sounds like, by your description, that there's been a
4 progressive increase in robustness, just long story short here,
5 since the original 1000 Series that came out in the 1970s through
6 the current design, the current car design the 6000 Series. Would
7 that be an accurate way of reflecting that?

8 MR. HILLER: I think that's an accurate way to represent
9 that, yes.

10 MR. DOWNS: Great, thank you. Okay, a slightly
11 different topic here. As a result of the Fort Totten collision
12 last June, did WMATA initiate any measures to reduce the
13 vulnerability of the 1000 Series cars to experiencing catastrophic
14 telescoping damage that might occur in a serious collision?

15 MR. HILLER: WMATA has bellied the 1000 Series cars as a
16 result of the collision. As far as structural enhancements to the
17 1000 Series to minimize crash energy, no, there's not been
18 anything done.

19 MR. DOWNS: And by bellying are you referring to placing
20 these cars, this particular series of cars, in the center of a
21 train consist wherever you can?

22 MR. HILLER: That is correct.

23 MR. DOWNS: Did WMATA do anything to demonstrate the
24 validation process for this bellying process?

25 MR. HILLER: To my knowledge, there was no engineering

1 analysis to include one-dimensional, sort of lump mode analysis or
2 maybe the computer modeling or physical testing.

3 MR. DOWNS: So who made that decision? Was that an
4 operations decision? Was that an engineering decision?

5 MR. HILLER: It's my understanding that that was an
6 operations decision, not an engineering decision.

7 MR. DOWNS: Mr. Kubicek, might you be able to address
8 that?

9 MR. KUBICEK: Yes. We were --

10 MR. DOWNS: Can we turn up that microphone, please?

11 MR. KUBICEK: Is it working now? Okay. Yes, the
12 decision was made at the time or the moment of the incident.
13 Since there was a lot of communication and concern about the 1000
14 Series, there was a couple of options. One, do you park the
15 entire fleet? Well, if you park the entire fleet, then that means
16 that definitely the region would be impacted because we just don't
17 have the equipment to sustain it. The other component was,
18 whenever we looked at it from a standpoint of the operational
19 environment of the equipment, you know, to date, the logic was to
20 go ahead and belly them for the time being until further review
21 and analysis could be conducted.

22 MR. DOWNS: Okay, thank you. September 27, 2009,
23 Washington Post put an article entitled "Sandwiching Older Metro
24 Cars Was PR Move." A few days later, in WMATA's website there was
25 a document appearing that provided some rebuttal points. Are you

1 familiar with that document, Mr. Hiller?

2 MR. HILLER: Yes, I am.

3 MR. DOWNS: Great. Mr. Dobranetski, I'd like to have
4 this document entered into evidence as an exhibit. That's the
5 document I left on your desk this morning.

6 HEARING OFFICER DOBRANETSKI: Okay, that'll be Exhibit
7 P2-1.

8 MR. DOWNS: P2-1. If I could ask Mr. Jones -- Mark, if
9 you could pull that up on the screen for us. While he's doing
10 that -- thank you.

11 CHAIRMAN SUMWALT: Yes, we will accept that as an
12 exhibit.

13 MR. DOWNS: Thank you, sir. We have that exhibit on our
14 screen. If you could scroll down a little bit, Mark, please. On
15 the right-hand -- too far. On the right-hand column we have --
16 left-hand column we have the article itself. Literally sentence
17 by sentence on the right-hand column are rebuttal points, what
18 appear to be rebuttal points on those individual sentences. And
19 if you could scroll to the bottom paragraph there, it says, "Well,
20 no analysis exists on the benefits of specifically shifting Metro
21 railcars. Several studies have been conducted on other trains and
22 they have found that there is a benefit of doing this. The U.S.
23 Department of Transportation's research and Research Initiative
24 and Technology Administration, RITA, has compiled a great deal of
25 research relevant to crashworthiness." And they cite the Volpe

1 Center website. "Officials on Metro's staff believe that if the
2 oldest cars are in the center of six and eight-car trains, the
3 newer cars may act as a buffer and absorb the majority of the
4 impact in the event of a collision. Mr. Hiller, might you be able
5 to address that? Is that technically accurate?

6 MR. HILLER: Technically, I think there can be some
7 empirical relationships drawn from the collisions that we've seen
8 to date on WMATA property. Omitting the 1982 incident that
9 occurred in Smithsonian Station, the accidents that we've seen so
10 far here at WMATA that involved head-on collisions, the first car
11 of the striking train suffered the most damage. So that's sort of
12 an empirical type of data that we can classify. The other thing
13 we know about the 1000 Series is, structurally, they are a weaker
14 car when you compare them with the 4s, 2s, 3s, 4s, 5s, 6s.

15 Now, these studies that have been conducted for Volpe
16 and various other entities, they involve different types of
17 vehicles. They involve vehicles that contain very similar
18 attenuation characteristics throughout the consist. They involve
19 cars that have different mechanisms in the front end. They're not
20 transit cars. So I would say that I could not conclusively agree
21 that this information would support a decision, an engineering
22 decision, to place a car into the center of the consist.

23 MR. DOWNS: Okay. So suffice it to say, would it be a
24 fair and accurate observation that by bellying these cars, a small
25 amount, a relatively small amount of collision energy might be

1 absorbed the outer cars, whereas there still might be, in a more
2 serious collision, a vast amount of energy that still would make
3 it to the center of the train? Is that fair?

4 MR. HILLER: I think that could be a fair statement.
5 One of the things we did learn from the acceptance testing in the
6 5000 Series was that approximately three to four times of the
7 energy was absorbed by the front cars. Again, this is -- you
8 can't use this as a validation because we were dealing with cars
9 that had light characteristics and had energy absorption
10 characteristics as well. But it's information that one could
11 consider as potential.

12 And there have been studies in the past about kinetic
13 energy and some first order approximations done by a gentleman
14 that you and I are very aware of, that say that the majority of
15 the structural damage occurs on the two colliding cars and it's
16 the front car that would absorb most of the energy or much of the
17 energy. But quantitatively, we don't know.

18 MR. DOWNS: And perhaps we'd have to conduct very
19 sophisticated computer modeling in order to make that assessment?

20 MR. HILLER: Yes, we would.

21 MR. DOWNS: Great. Again, the bottom line here is that
22 because the 1000 Series cars are "the weak link in the chain," is
23 that basically the reason for the process here with bellying, and
24 that in a higher-speed collision you're going to see potentially a
25 lot of that energy going to that car, nonetheless?

1 MR. HILLER: I'm not sure I understand your question.
2 Could you repeat that?

3 MR. DOWNS: I'll rephrase it. In a higher-speed
4 collision you're still going to -- because the car is less robust
5 than the other cars, you're still going to see a catastrophic
6 telescoping situation potentially occurring.

7 MR. HILLER: The potential is definitely there and I
8 think you would agree with me that it would be beneficial to model
9 this using advanced modeling techniques.

10 MR. DOWNS: Okay, thank you. Mark, if we could scroll
11 down to page 3, please. While he's doing that, I'll paraphrase
12 from page 3. This is a discussion point, rebuttal point. It says
13 here, we have not conducted tests on this, but a review of
14 literature does show that there is modeling, and it cites a paper.
15 I'm not going to enter that paper into the -- as an exhibit, but
16 the paper, which I think you're familiar with, it's entitled
17 "High-Speed Passenger Train Crashworthiness and Occupant
18 Survivability." The bottom-line question here is, would that
19 paper be a fair paper to utilize to rebut that point?

20 MR. HILLER: No, not in a pure engineering sense.
21 Again, we were dealing with -- I believe it was a Pioneer 3 car
22 that was used as their basis. This is an FRA Type 2 vehicle, buff
23 loads upwards of 800 kips. So you know, we're not comparing
24 apples to apples with that particular analysis. But there were
25 overrides that took place in that test, because they model it two

1 ways and physically tested it two ways, one without crash energy
2 management and one with crash energy management. Suffice it to
3 say, you know, it's easy for non-engineer types to make these
4 types of inferences when they see this type of information, but I
5 would not.

6 MR. DOWNS: I see, thanks. So in summary, in my citing
7 of the couple of technical points here on these rebuttals, it
8 appears that this particular rebuttal paper was really not
9 organized and presented on basis in fact. Would you say that's a
10 fair assessment?

11 MR. HILLER: Correct.

12 MR. DOWNS: Thank you.

13 MR. HILLER: In a pure sense, not based on fact.

14 MR. DOWNS: Thank you. I'm going to move on to my final
15 question. In the docket here for the public hearing we have
16 Exhibit P1-h, which on page 4 states, "The current program
17 schedule provides for delivery of new 7000 Series railcars to
18 begin in 2013, with replacement vehicles for the 1000 Series being
19 delivered from 2014 through 2016." Question. And I'll address
20 first to Mr. Kubicek and then Mr. Hiller, maybe. Why not
21 immediately use those 7000 Series cars delivered in 2013 to retire
22 the 1000 Series cars, since the Safety Board has informed WMATA
23 that they are susceptible to telescoping and potentially subject
24 to catastrophic compromise of the occupant survival space? In
25 other words, why wait the additional 12 to 23 months from the

1 initial delivery?

2 MR. KUBICEK: Well, we do have -- this is the beginning
3 of a large program, as you know. And so the first delivery of the
4 railcars are 64 railcars which, you know, are noted to support the
5 Dulles alignment. At the same point in time these railcars will
6 be operating throughout all of our respective alignments. Part of
7 the drill of that is that whenever you first get something
8 delivered, you have to go through a pilot phase. You have to
9 demonstrate that your pilot cars are working correctly. Then you
10 go into a full production mode.

11 So as we move forward, we would monitor our spare ratio
12 going forward, and if we have the opportunity to keep some cars
13 off to the side that we don't want to operate, you know, the 1000
14 Series, we would afford that. But at the same in time that's
15 going to be driven by ridership models and what we're going to be
16 facing in the next, you know, two to three years. So what we're
17 providing is an outreach, you know, forecast. But if I could
18 predict the future of what we're going to look like from a
19 ridership perspective in the next three to four years, we
20 definitely would've tried to solidify our position a little bit
21 more aggressively.

22 MR. DOWNS: Mr. Hiller, might you have anything to add
23 to that?

24 MR. HILLER: It is an operational call. Can you retire
25 the 1000 Series fleets as the new 7000 Series are coming in?

1 Again, it all boils down to what operational requirements are
2 there. Ideally I'd love to, as we move forward, to get those off
3 the alignment as fast as possible. This is likely going to be one
4 of the most aggressive procurements any property has undertaken,
5 nonetheless WMATA. If we're capable of delivering up to 12 to 16
6 cars per month, then the best case scenario for replacement, as we
7 see, is 2014, after we take care of the 64. So I'm sorry, that's
8 the best I can do to answer your question.

9 MR. DOWNS: Okay, thanks. I wanted to give you the
10 opportunity from a technical perspective, if you had anything to
11 add. I'd like to add one final question on the topic of the 1000
12 Series cars. Is there anything that could be done now, in the way
13 of a retrofit or a modification -- granted, we only have a few
14 years to go on the cars before they're going to be replaced. Is
15 there anything that comes to mind for you, Mr. Hiller, that could
16 be done with this particular car to increase the crashworthiness
17 of the vehicle?

18 MR. HILLER: Well, what we can look at is if we're able
19 to incorporate some of the available technologies that exist
20 today. There has been much done with energy absorbing couplers
21 and energy absorbing anti-climbers. These are some of the
22 appliances, for lack of a better word, that could be relatively
23 quickly deployed. Now, you know, we have 300 cars. To engage all
24 of these cars in the most aggressive manner at WMATA, we're really
25 looking at 18 to 24 months before we could completely outfit the

1 vehicles with a solution. But keep in mind, these types of
2 improvements will only address nearly three to five percent of the
3 energy that would one would expect from a 20-mile-an-hour
4 collision. And we do use this number 20 as it's tied into some of
5 the interior accelerations passengers could experience. So
6 there's got to be a balance.

7 The number, the speed at which a collision take place,
8 it's a discussed topic even in, you know, committee today. So
9 offsetting just that small amount of energy in a 20-mile-an-hour
10 collision, there would be some cost benefit analysis that would
11 have to be done along with that, as well. So those are some of
12 the things that we could do quickly. If you were going to keep
13 the vehicle for a long period of time, it would be a great
14 challenge to actually incorporate crash energy management into the
15 vehicle structure as it is today.

16 MR. DOWNS: Yeah, I believe there was a Booze Allen
17 paper that WMATA submitted to us in the Woodley Park investigation
18 that came to the conclusion that the car body itself really can't
19 be practically retrofitted; is that correct?

20 MR. HILLER: That's what the study cited. And yes, they
21 stated that it's not a practical economical endeavor to take on at
22 this time. And that was in 1996, 1997.

23 MR. DOWNS: And that's because the crash energy
24 management features, which would take the bulk of a hit, if you
25 will, have to be built into the car body itself, into the floor,

1 into the frame and such, and it's just not an add-on feature.

2 MR. HILLER: Correct. The only sort of add-on features
3 at this time are these energy absorbing or attenuating couplers
4 and the anti-climbers.

5 MR. DOWNS: Thank you. Mr. Chairman, that concludes my
6 questions.

7 CHAIRMAN SUMWALT: Thank you. Before we go to the back
8 row, I understand that Mr. Klejst has a few questions.

9 MR. KLEJST: Yes, thank you, Mr. Chairman. Mr. Kubicek,
10 we just heard some discussion this morning about the placement of
11 the 1000 Series cars towards the center of your train sets,
12 reconfiguration of your train sets. Was the hazard management
13 process, as outlined in your system safety program plan, used in
14 making that determination?

15 MR. KUBICEK: At the time of the decision, I cannot say
16 that it was. I mean, it was basically responding to a very -- a
17 lot of pressure to figure out what was the best thing for us to
18 do, you know, moving forward, you know, versus, as I previously
19 stated, do you park 25 percent of your fleet, knowing the impact
20 of that? You reach out and you have other options or discussions
21 with other individuals, and I conclusively can't say that we used
22 it 100 percent in the selection of putting it in the belly of the
23 1000s.

24 MR. KLEJST: As a follow-up to that, was the change
25 process, as outlined in Element 17 of your System Safety Program

1 Plan, used in that decision-making process?

2 MR. KUBICEK: Change process?

3 MR. KLEJST: As defined in your System Safety Program
4 Plan.

5 MR. KUBICEK: No, sir.

6 MR. KLEJST: This document was --

7 MR. KUBICEK: No, sir.

8 MR. KLEJST: -- provided to us by WMATA. Could you tell
9 us the groups that comprise the design control board as defined by
10 your System Safety Program Plan, the configuration management
11 described in Element 17?

12 MR. KUBICEK: The change control process, it would go
13 through our engineering, our quality. We would go through safety,
14 through the respective owning department.

15 MR. KLEJST: And with respect to this particular change,
16 the movement of your equipment, the 1100 Series cars, to the
17 center of the train sets, did that take place?

18 MR. KUBICEK: For the movement of the 1000 series to the
19 bellying of the railcar --

20 MR. KLEJST: Correct.

21 MR. KUBICEK: -- of other railcars? No.

22 MR. KLEJST: Okay. So you did not follow or WMATA did
23 not follow the elements that are contained within System Safety
24 Program Plan?

25 MR. KUBICEK: As far as a formal document signed off and

1 you know, providing instructions per that document, I would say
2 no.

3 MR. KLEJST: But this is the document by which WMATA
4 operates with respect to safety as required by Part 659 of
5 Title 49; is that correct?

6 MR. KUBICEK: That is the document that we're to follow.

7 MR. KLEJST: Thank you. No further questions.

8 CHAIRMAN SUMWALT: Okay, Mr. Jones?

9 MR. JONES: Thank you, Mr. Chairman.

10 Mr. Hielmann, yesterday -- going back to some of the
11 discussions yesterday, it was my understanding that WMATA uses
12 some of the applicable FRA regulations as a basis for your
13 periodic testing of train control components; is that correct?

14 MR. HIELMANN: That's correct.

15 MR. JONES: Prior to June 22, 2009, did you use the FRA
16 regulations for testing relays and insulation resistance test of
17 cables and wires?

18 MR. HIELMANN: Our preventive maintenance procedures did
19 test the relays according FRA guidelines, but we did not have
20 cable insulation test procedure incorporated into our periodic
21 maintenance.

22 MR. JONES: Have you incorporated those now or --

23 MR. HIELMANN: I can't say whether it's incorporated.
24 We had a draft procedure at the time of the accident that was
25 being vetted for trials in the field. We had intended to include

1 cable insulation testing as part of our program for preventive
2 maintenance all the way back to 1995. We put together a program
3 for it and at that time we could not get funding for our budget to
4 cover it and couldn't include it in our future work. And I know
5 that's been tried again since then. I don't know what the status
6 is now.

7 MR. JONES: Are you familiar with any APTA standards for
8 recommended practices of testing of train control components on a
9 periodic basis?

10 MR. HIELMANN: Yes, they have recommended practices for
11 testing of track circuit switches, et cetera.

12 MR. JONES: And do they happen like every three months
13 or six months or whatever?

14 MR. HIELMANN: Yes.

15 MR. JONES: Okay.

16 MR. HIELMANN: The APTA recommended practices pretty
17 much follow the volume of periodic maintenance procedures that we
18 use.

19 MR. JONES: Okay, thanks. Any other standards that you
20 use or look at also on developing your --

21 MR. HIELMANN: Well, our design criteria, WMATA's design
22 criteria, requires that the train control system be designed,
23 built and maintained in accordance with FRA and AREMA standards.

24 MR. JONES: Okay. So you also use the AREMA standards?

25 MR. HIELMANN: Yes, sir.

1 MR. JONES: Okay. And Mr. Nabb, you might weigh in on
2 this. Does WMATA have a formal process for placing records of
3 tests or retaining the records of tests?

4 MR. NABB: Yes, all of the datasheets for the PMIs are
5 maintained in the train control rooms and a separate copy is
6 maintained in each field office.

7 MR. JONES: Do the PMIs, do they include relay tests
8 also?

9 MR. NABB: Yes.

10 MR. JONES: Okay.

11 MR. NABB: That's correct.

12 MR. JONES: Are the records retained for a certain
13 amount of time or --

14 MR. NABB: Forever.

15 MR. JONES: Forever. Okay. Do you know if the
16 Tri-State Oversight Committee ever has looked at any of the
17 records of tests? Do they examine them?

18 MR. NABB: I do not recall if the Tri-State Oversight
19 has specifically looked at the PMI datasheets that are kept in the
20 train control rooms.

21 MR. JONES: When you say datasheets, are these actual
22 records that are signed by the employees performing the test?

23 MR. NABB: Yes, they're initialed off on the individual
24 entries. The employee's pro signs are put in there to notice who
25 did the entries.

1 MR. JONES: Is WMATA required to report unsafe failures
2 of a signal or train control system to the Tri-State Oversight
3 Committee?

4 MR. NABB: I believe we heard testimony yesterday that
5 indicated that any unsafe conditions are reported to the Tri-State
6 Oversight Committee.

7 MR. JONES: Okay. Do you do that under a requirement or
8 do you do that on your own?

9 MR. NABB: I do not personally communicate with the
10 Tri-State Oversight Committee.

11 MR. JONES: Okay. Yesterday we discussed some the
12 October 2006 engineering bulletin. And correct me if I'm wrong,
13 it talked about the three -- placement of three shunts in a track
14 circuit. Could you explain the process for how engineering
15 bulletins such as that are distributed to the field maintenance
16 personnel?

17 MR. NABB: The engineering bulletins are to be sent down
18 to the individual work centers and there is a sheet that is
19 supposed to be maintained on each bulletin, where the employee
20 acknowledges that they have received that engineering bulletin.

21 MR. JONES: And then the acknowledgement is kept on file
22 somewhere?

23 MR. NABB: According to the procedure, the signing sheet
24 of that is to be retained for two years.

25 MR. JONES: Do you know if all of the train control

1 maintenance personnel were aware of the particular engineering
2 bulletin, the October 2006, that required the three shunts prior
3 to June 22, 2009?

4 MR. NABB: I would say that, based upon information that
5 has come to light since the June 22nd accident, I believe that the
6 distribution of the bulletins back in the 2005-2006 time frame was
7 probably uneven. In other words, there were technicians who had
8 that knowledge; there were other technicians who did not.
9 Unfortunately, with only two-year retention of the records, I was
10 unable to verify that everyone had, in fact, signed off on
11 acknowledging those bulletins.

12 MR. JONES: Mr. Kubicek, you might want to weigh in on
13 this. Does WMATA have a formal training program for the train
14 control employees when they come on board and also refresher
15 training?

16 MR. KUBICEK: Yes, there is a formal training program.

17 MR. JONES: Could you give a brief overview of what's
18 included in that program?

19 MR. KUBICEK: We would hire, you know, based on a
20 certain level or technical capability and then there are several
21 different models that we work with from a, you know, concept to a
22 hands-on environment. You have classroom settings as well as
23 emphasis on your field environment. And then there is a
24 progression, you know, with our technicians, where they work up,
25 you know, from a basic minimum level to more of a AA technician,

1 is what they call them here at WMATA, which would be more of a
2 well-rounded, tenured, well-trained ATC technician.

3 MR. JONES: Thank you, Mr. Chairman, that's all I have.

4 CHAIRMAN SUMWALT: Thank you. Mr. Gura.

5 MR. GURA: I just have a few questions. Mr. Hiller,
6 when you're working on the crash energy management and you're
7 doing this modeling and physical testing, what is the maximum
8 collision speed that you're testing for before there's the
9 survival space in both the operating cab and maybe in the
10 passenger cab compromised?

11 MR. HILLER: WMATA right now has adopted the 20-mile-an-
12 hour speed for managing a collision. The RT-2 standard that I
13 referred to earlier -- let me just verify. It's at 25 kilometers
14 per hour or roughly 15 miles per hour. So those are the
15 standards.

16 MR. GURA: Okay. And then, how does that compare to the
17 other series of cars that are out in the field? Is the 1000
18 Series at the 15 mile an hour?

19 MR. HILLER: Let me see if I understand your question
20 correctly. Your question is, Will the 1000 Series be able to
21 manage a collision at 15 miles an hour or 20?

22 MR. GURA: Right. Presently, you're designing for the
23 20; is that correct?

24 MR. HILLER: Um-hum. Yes.

25 MR. GURA: And the series that are operating out

1 presently, I think you said the 1000, the 3000, 5000, those
2 series, are those at any percentage of that 20 mile an hour or are
3 they 15 mile an hour, 10 mile an hour? What is the collision
4 speed on those?

5 MR. HILLER: Well, the vehicle itself is designed to
6 manage a 200,000 buff load.

7 MR. GURA: Right, but what does that translate to speed?

8 MR. HILLER: I'd have to run that calculation for you.
9 But empirically, what we've seen to date, the vehicles can sustain
10 a five-mile-an-hour collision with relatively minimal damage.
11 We're looking at the couplers and the sheer pins. Then from there
12 we move into the coupler separation itself from the anchor ball.
13 In other collisions, we've seen upwards of 17 miles an hour and
14 that's where we begin to see signs of the car body failing in a
15 way that's consistent with no crash energy management. So I can't
16 quantitatively answer your question. I believe the number is
17 somewhere between 15 and 20.

18 MR. GURA: On the older series, even the 1000 Series?

19 MR. HILLER: I'd have to get -- I'd have to come back to
20 you with that answer.

21 MR. GURA: If you would, please.

22 MR. HILLER: Yeah.

23 CHAIRMAN SUMWALT: Okay. So we'll make that an official
24 request and we'll enter that into the exhibits, and
25 Mr. Dobranetski, what exhibit number would that be?

1 HEARING OFFICER DOBRANETSKI: What are you going to call
2 this,
3 Mr. Hiller, a crash energy speed analysis?

4 MR. HILLER: I think I'll call this the impact energy
5 absorbed by a 1000 Series car at 15 miles an hour.

6 HEARING OFFICER DOBRANETSKI: But I would need that in
7 some kind of a comparison note so, you know, you could say, you
8 know, what would it be for the new design, 7000, or whatever
9 series that you have out there operating, so you could actually
10 have a comparative analysis. That number by itself wouldn't mean
11 anything.

12 Thank you.

13 MR. HILLER: You're welcome.

14 CHAIRMAN SUMWALT: Okay. And that would be Exhibit
15 Number --

16 HEARING OFFICER DOBRANETSKI: P2-m.

17 CHAIRMAN SUMWALT: Okay. So when the document arrives
18 we will not classify it as an exhibit, but we will enter it into
19 the docket, is what GC's calling it, if that's acceptable with
20 you?

21 HEARING OFFICER DOBRANETSKI: That's acceptable to me.

22 CHAIRMAN SUMWALT: And as far as time frame for it
23 arriving, when would be a reasonable time for you to produce it?

24 MR. HILLER: Let's say by next Wednesday, shouldn't be a
25 problem.

1 CHAIRMAN SUMWALT: Next Wednesday, Mr. Gura. Would that
2 be satisfactory? I mean, that sounds reasonable to me.

3 MR. GURA: That's fine. And if you wouldn't mind, it
4 probably would be best to be -- go to Rick. Is that okay, Rick?
5 Just send it to Mr. Downs.

6 MR. HILLER: Yes, sir.

7 CHAIRMAN SUMWALT: Okay. Thank you very much. I'm
8 sorry, please continue.

9 MR. GURA: Okay, Mr. Chairman.

10 I'm finished with crashworthiness and I'd like to kind
11 of swing over to the signal side a little bit. There was a
12 question that I had kind of written down and Mark touched on it,
13 but it didn't quite get answered. Is there something required in
14 the 659 that WMATA is to notify state or federal agencies when an
15 automatic train control system malfunctioned? Now, I heard that
16 they had been notified. I want to know are they required to be
17 notified and Mr. Nabb said well, you know, you really don't do it.
18 So, you know, who takes care of that and is it required?

19 MR. KUBICEK: Based on WMATA's System Safety Program
20 Plan, our safety department is the single point of contact with
21 the Tri-State Oversight Committee. We notify the safety
22 department of any hazard anywhere in the system immediately and
23 they take care of the notifications for Tri-State Oversight
24 Committee. Our contact with Tri-State Oversight Committee is
25 strictly on Tri-State Oversight Committee's initiative.

1 MR. GURA: Okay. When there is an automatic train
2 control system malfunction, you kind of described you went out
3 there and did some trouble shooting; it was a few hours later when
4 you got out there. Is there a system in place that when something
5 like that occurs, is there some kind of speed restriction or
6 something that automatically takes place until the defect could be
7 identified or fixed?

8 MR. KUBICEK: As far as the speed restriction that takes
9 place automatically, there is no such thing. Our speed commands
10 are logically developed for following trains. If you don't detect
11 a train then logically, you would not develop a slower speed
12 command for the following train. But we do have temporary speed
13 restrictions that can be installed manually in the field by the
14 maintainers and in the case of -- I believe you're referring to
15 the Rosslyn incident?

16 MR. GURA: Correct.

17 MR. KUBICEK: As soon as we found out about that
18 incident, we made the telephone call, or as soon as we found out
19 that we had a train detection problem, we made the telephone call
20 to the operations control center and they immediately instituted
21 an absolute block which protects all train movements.

22 MR. GURA: Okay, so -- but there's a two-hour lapse
23 there, right? Or two or three. I think you said you got out
24 there a couple of hours later and identified the problem, then you
25 instituted that block but in the meantime, quite a few trains

1 operated. I was just wondering if there's anything where the
2 control says, hey, we better slow trains through this area until
3 something can be identified. Is there anything like that? Where
4 they could, you know, put in a speed restriction to the trains.

5 MR. KUBICEK: If you recall, the discovery of the
6 problem happened in overhearing a conversation and then we
7 requested data so that we could analyze the occurrence to see if
8 there was a problem. As soon as there was a problem known, action
9 was taken.

10 MR. GURA: Okay. When a train control, automatic train
11 control, system malfunctions, who has the ultimate responsibility
12 to verify the system is now functioning and releases the track for
13 normal operation? Does that go right down to the technician side
14 or does it bubble up to a supervisor side?

15 MR. KUBICEK: The technicians are certified -- or not
16 certified, but they are -- we don't have a certification program,
17 per se. The technicians are trained on the work that they do and
18 they place the equipment back in service after they have tested
19 it.

20 MR. GURA: Okay. I'm going to go back a little bit on
21 the System Safety Department, TOC and your quality control
22 participate in the oversight of maintenance. I think you
23 mentioned that TOC came out and participated. You know, there's
24 like a specificity of knowledge involved in the signal side to be,
25 if you want to call it AA or a journeyman signalman or technician,

1 you know. Do they participate in that manner or is it more like
2 just watching what you're doing or do they come out at all when
3 you have a signal, identified problem?

4 MR. KUBICEK: I can only speak to TOC coming out on two
5 occasions. One occasion was from the Rosslyn incident where TOC
6 came and interviewed me for a couple hours in the chief engineer's
7 office over the incident and how it was handled. The other case
8 was the Fort Totten accident. TOC sent a representative out there
9 who worked in the field with the investigators for several weeks.

10 MR. GURA: Okay. And if you were going to -- say, your
11 most qualified technician is like at a level 10, where -- and the
12 most unqualified guy would be a 1, where would you put someone of
13 that -- you know, the TOC person that was involved in the
14 interviews and in the participation of the testing, where would
15 you put that individual? There's a level of knowledge.

16 MR. KUBICEK: You're really asking me to speculate. I
17 can take a shot at it, but I don't think that's fair.

18 MR. GURA: Well, okay. Well, the knowledge level --
19 let's put it this way, the knowledge level in your two-hour
20 interview.

21 MR. KUBICEK: The interviewer was very knowledgeable of
22 FRA guidelines and AREMA standards and how our equipment
23 functioned.

24 MR. GURA: Okay. That's good enough. That's all the
25 questions I have.

1 CHAIRMAN SUMWALT: Okay. As I understand it, there are
2 no further questions from the Technical Panel and we will go to
3 the parties. Before we do that, just a couple of housekeeping
4 clean-up items from yesterday.

5 Mr. Kubicek, we did have a request from Dr. Kolly to you
6 on a data run on the reliability of recorders from 2006 to the
7 present, and I just wanted to go ahead, as the Chairman, put in an
8 official request for that, so we will have an IOU. And what would
9 be a reasonable time in which you could produce that? Will 30
10 days give you -- I realize you've got a lot going on. Will 30
11 days be a sufficient amount of time?

12 MR. KUBICEK: Yes, sir. Thirty days would be
13 sufficient.

14 CHAIRMAN SUMWALT: Good. And as far as who to get it
15 to, the request a few minutes ago on the other point, I think that
16 all of the documents, as a matter of course, should be funneled
17 through the Investigator-In-Charge, Mr. Dobranetski, and then we
18 have a central clearinghouse for that. Okay. Any -- yeah. We'll
19 move to the parties. We agreed in a pre-hearing conference that
20 we will rotate who gets to go first in the party questioning and
21 the FRA started yesterday, so this morning we will start with the
22 Federal Transit Administration. Mr. Flanigon?

23 MR. FLANIGON: Good morning. I have a couple questions.
24 I'll start with Mr. Hiller. This may have been incorporated in
25 some of your answers, but I wanted to ask it in a way that sort of

1 ties it together. The 7000 Series car that's going to brought on
2 board at WMATA, does the specification reference and require that
3 the RT-2 standard be met or exceeded?

4 MR. HILLER: It does not.

5 MR. FLANIGON: Can you expand on it, it's just not
6 mentioned in it at all or --

7 MR. HILLER: RT-2 just came online in 2008 and our
8 specifications were fully developed prior to that, and when a new
9 specification or a requirement like that is introduced to our
10 industry, it takes a little bit of time to vet it and actually see
11 if it can fit into your alignment or property or vehicle. So we
12 had in place what we felt were leading requirements -- and I say
13 leading, I'll say these requirements were ahead of the curve and
14 we were quite comfortable with them.

15 And I'd like to point out that our requirements are just
16 a little bit better. Better is the wrong word. I would say
17 there's a little more focus on our property with our standards, so
18 we do adopt some of the elements within RT-2. Some of the members
19 that had developed RT-2, one of which was on WMATA staff and many
20 of which helped us developed our specifications, are members of
21 that committee, as well. So it's a collaborative effort, so we
22 all talk.

23 MR. FLANIGON: Good. Thank you. And one question for
24 Mr. Hielmann. You had mentioned running the changes to your
25 maintenance procedures and testing procedures by the signal

1 manufacturer, which is Alstom, correct, for comment before you put
2 them into place, that's correct?

3 MR. HIELMANN: The only procedure that I referred to
4 that on was the one where we tested for parasitic oscillation.

5 MR. FLANIGON: Parasitic oscillation. And that's in
6 response to the urgent recommendation or the recommendations from
7 the Safety Board. There was also kind of an industry-wide
8 recommendation along the same lines and I would ask if you're
9 aware of any guidance from the signal suppliers and manufacturers
10 you work with to -- either you, WMATA, or to the industry in
11 general on how to perform those tests?

12 MR. HIELMANN: No, I'm not aware of the manufacturers
13 offering any help with that. The manufacturers do provide
14 information for, in their original documentation, for how to
15 maintain test equipment, but those tests don't go into something
16 like parasitic oscillation.

17 MR. FLANIGON: Thank you. That's all.

18 CHAIRMAN SUMWALT: Thank you, Mr. Flanigon.

19 Now the Tri-State Oversight Committee.

20 MR. MADISON: Yes, we have two questions for Mr. Nabb.
21 The first question is what specific notification or internal
22 reporting requirements existed for loss of shunt or false clear
23 incidents prior to June 22nd?

24 MR. NABB: There was a document that was authored by the
25 engineering staff that required the superintendent of the ATC

1 maintenance branch to run the loss of shunt tool once per month.

2 MR. MADISON: Okay. And the second question is are you
3 aware that the TOC conducts on-site training reviews with the last
4 one being in 2007 and that it did look at signal system
5 inspections and maintenance?

6 MR. NABB: I'm aware of the requirement for the TOC to
7 do those type of reviews; however, in 2007 I was not in an
8 oversight capacity over the automatic train control system. I was
9 superintendent of communications. I did meet with them in 2007 on
10 communications issues.

11 MR. MADISON: Okay, thank you. Those are all the
12 questions we have.

13 CHAIRMAN SUMWALT: Thank you, Mr. Madison.

14 And WMATA, you have witnesses, so it will be your choice
15 as to what order you go.

16 CHIEF TABORN: No questions, Mr. Chairman.

17 CHAIRMAN SUMWALT: Thank you, Chief Taborn.

18 Now we go to Washington DC Fire and EMS Department.

19 CHIEF SCHULTZ: No questions, Chairman.

20 CHAIRMAN SUMWALT: Thank you, Chief Schultz.

21 ATU?

22 MS. JETER: Okay. A couple, thank you. Yesterday, I
23 think it was Mr. Hielmann that talked about the testing that was
24 done on the bond that was reinstalled on June 17th, the bond that
25 failed at Fort Totten, and then you reinstalled it on June 17th

1 and it worked?

2 MR. HIELMANN: The bond was originally installed on
3 June 17th.

4 MS. JETER: Okay. And then --

5 MR. HIELMANN: And then during our investigation of the
6 problem, we reinstalled it three different times.

7 MS. JETER: Okay. When you said that you reinstalled it
8 and you adjusted it and it tested properly, could that have been
9 because when it was originally installed the adjustment was
10 incorrect?

11 MR. HIELMANN: That's difficult to say yes or no to. We
12 do know that we had, during our work, we had a power level test
13 box connected. I mentioned that when the power level test box was
14 connected, the failure mode disappeared. That's because it
15 changes the conditions of the circuit that changes the amount of
16 copper that's in the preamp circuit and so it changes the
17 resistance in that circuit.

18 MS. JETER: Was that test originally done when it was
19 originally installed, do you know?

20 MR. HIELMANN: Did they use the power level test box? I
21 do not know.

22 MS. JETER: Okay. Was there any other functional tests
23 done after the June 17th installation?

24 MR. HIELMANN: Do you mean prior to the crash?

25 MS. JETER: Yes.

1 MR. HIELMANN: None that I know of.

2 MS. JETER: Okay. Bear with me for a second, please.

3 CHAIRMAN SUMWALT: And if you would, Ms. Jeter, we want
4 to hear what you're saying and so pull that mic --

5 MS. JETER: Oh.

6 CHAIRMAN SUMWALT: -- directly over. Thank you so much.

7 MS. JETER: Thank you. Mr. Nabb, you said that there
8 were eight circuits that were tested and displayed parasitic
9 oscillation when you were working with ARINC?

10 MR. NABB: No, this was the testing that was done after
11 the engineering staff trained our technicians in parasitic
12 oscillation. We went out and tested those circuits involved and
13 there were eight additional circuits identified during our
14 testing. This was not in conjunction with ARINC.

15 MS. JETER: Okay, the eight that were identified during
16 your testing, they showed -- it showed that they had the same
17 characteristic?

18 MR. NABB: That is correct.

19 MS. JETER: And can you tell me where that was located
20 or where they were located?

21 MR. NABB: I have the records of that, of each
22 individual circuit, and I could make that available.

23 MS. JETER: Was it outside of the Fort Totten area,
24 throughout the railroad?

25 MR. NABB: Yes.

1 MS. JETER: Okay, thank you. I would like to see that,
2 thank you. Mr. Hiller, there was much discussion about the
3 bellying of the 1000 cars, so in layman's terms, I have just a
4 simple question. If it is said that the weaker car is the 1000
5 car and there had been improvements that have been made on
6 the 2000, 3000, 4000, 5000 and 6000 and those cars flanked that
7 weaker car, would it be as much damage done if that -- if it was
8 hit and that 1000 car was in the lead or if it was in the belly?

9 MR. HILLER: In layman's terms, the answer to your
10 question, there would not be as much damage to the 1000 Series car
11 if it was in the belly as opposed to being in the lead in a
12 collision consistent with what we've seen, you know, 35 miles an
13 hour, like that was Woodley Park, and the estimate for the Fort
14 Totten collision, I'm not aware. I'm going to have to say if
15 that's above 35, then we would see, you know, un-improvement if it
16 was in the belly. Quantitatively, I can't tell you how much.

17 MS. JETER: Okay. I think Mr. Nabb, I want to say
18 Mr. Nabb said that -- or it might've been Mr. Kubicek that said
19 that the ATC employees were trained since this bulletin came out.
20 Can you tell me the number of employees that were trained and what
21 type of training?

22 MR. NABB: Can you clarify specifically what you're --

23 MS. JETER: We're talking about the 2006 bulletin and
24 you said -- and after that someone asked whether or not there was
25 a formal training program for employees after that because now it

1 required that you go from a certain number of shunts to another
2 number of shunts.

3 MR. NABB: If you're talking about the question that
4 Mr. Kubicek was asked was about the formal training program and
5 specifically the journeyman training program, when there is an
6 engineering bulletin issued, in 2006, that was -- bulletin is
7 provided down to the shift supervisors and the technicians and
8 there are discussions to ensure that the technicians understand
9 the contents of those bulletins.

10 The statement I made earlier was the fact that through
11 my research, there was an uneven distribution of those bulletins
12 back in the 2005-2006 time frame based upon information that I
13 learned subsequent to the June 22nd accident as far as the number
14 of shunts that were being used for individual verifications.

15 MS. JETER: Okay. So once we had the accident in
16 June --

17 MR. NABB: Correct.

18 MS. JETER: -- and although you went back and looked at
19 the training to see who had the training and you couldn't tell
20 because after two years -- once you realized that, was there
21 anything that was done to reinforce or retrain the ATC staff with
22 the possibility in mind that 100 percent of them did not receive
23 the initial training?

24 MR. NABB: Understand that after this came to light, we
25 went back through the entire system and verified every individual

1 track circuit with a three-point shunt and ensured that all the
2 technicians understood that a three-point shunt was the
3 requirement for track circuit verification, yes.

4 MS. JETER: How did you ensure it, asking them the
5 question and them saying yes?

6 MR. NABB: No. They were all -- actually, they all
7 participated in the field verification of all of the circuits,
8 both supervisors and the technicians.

9 MS. JETER: Can you describe to me what the field
10 verification entails?

11 MR. NABB: It entails that you have an individual in the
12 train control room doing the adjustment of the module. You have
13 technicians wayside who are in communications with the technicians
14 in the train control room. They put down a shunt just inside the
15 transmitter end of the circuit. They are then -- once that is
16 done, they are then instructed to go to the middle of the circuit,
17 put down another shunt. Once that's completed successfully, they
18 then go and put one inside the receiver of the circuit. So there
19 are three points on the rail where a shunt is placed to do the
20 three-point shunt verification.

21 MS. JETER: And how many technicians do you have?

22 MR. NABB: I have approximately 190.

23 MS. JETER: And you have records to show that all 190
24 have had that training?

25 MR. NABB: To say that there are records documenting the

1 training, we certainly have the records showing where the
2 verifications were done and all of the technicians who performed
3 those verifications.

4 MS. JETER: Do you also have records showing all of the
5 retraining programs that you place individuals in throughout the
6 system?

7 MR. NABB: Yes. We have an automated system -- it's
8 called TS online -- that has a transcript for every individual
9 technician on all the formal training that they received both from
10 a technical perspective and a safety perspective. Every course is
11 entered into that system in a matter of record.

12 MS. JETER: Okay, thank you.

13 CHAIRMAN SUMWALT: Thank you, Ms. Jeter. And you had a
14 request, I believe, to Mr. Hiller for a document. Is that
15 something that you would just like -- you're requesting that he
16 furnish you or would you like that as part of the public docket
17 for this accident investigation?

18 MS. JETER: As part of the public docket for this action
19 in this accident.

20 CHAIRMAN SUMWALT: Okay. So exactly what is that
21 document and -- so we can be sure that we have it documented?

22 MS. JETER: What did I ask?

23 MR. NABB: That was the -- you asked me --

24 CHAIRMAN SUMWALT: Mr. Nabb, thank you.

25 MR. NABB: -- Mr. Nabb. And what that is, is it is the

1 identification of the eight circuits that were identified for
2 parasitic oscillation and I can have that in a week.

3 CHAIRMAN SUMWALT: That would be wonderful. Thank you.

4 MR. NABB: Okay.

5 CHAIRMAN SUMWALT: Thank you very much. We'll now move
6 to Alstom Signaling. Mr. Illenberg.

7 MR. ILLENBERG: Good morning. I have some questions for
8 Mr. Hielmann and the first question is a follow-up to the question
9 that was just asked, if the power level test box was not used when
10 the US&S bond was reinstalled, would the track circuit have still
11 shown a problem?

12 MR. HIELMANN: You said if the power level test box was
13 not used?

14 MR. ILLENBERG: Yeah, doing it with just the normal
15 adjustment procedure without using the test box.

16 MR. HIELMANN: Well, using the power level test box
17 prevented the failure mode, so not using the power level test box
18 would allow the failure mode to occur. Does that answer the
19 question?

20 MR. ILLENBERG: Yes, it does. Okay. I have a number of
21 questions regarding your testimony yesterday , first of all,
22 yesterday you were recounting a number of activities regarding the
23 investigation in the Fort Totten incident. In your testimony, you
24 explained a number of activities undertaken in the attempt to
25 isolate the potential cause of the failed train detection relating

1 to the Fort Totten incident. Perhaps it was me, but from your
2 testimony, I was left with the impression that all these
3 activities in terms of testing in investigation were done by WMATA
4 and WMATA alone. My question to you, Mr. Hielmann, is wasn't
5 these activities being conducted as part of the overall NTSB
6 investigation by the Signal and Train Control Group of which
7 Alstom was a member?

8 MR. HIELMANN: That's correct. In the sixth bullet of
9 my notes that I went through, I stated that, first of all, NTSB
10 controlled the scene, the investigation; what steps were taken and
11 what tests were performed. The NTSB, WMATA, TOC, FTA, FRA,
12 Alstom, Ansaldo STS were all involved in the investigation and
13 played equal parts in trouble shooting the problem.

14 MR. ILLENBERG: Okay. And is it also not a fact that
15 Alstom was instrumental in that investigation?

16 MR. HIELMANN: Absolutely.

17 MR. ILLENBERG: Okay. Now, the conclusions that you
18 reached in your testimony yesterday regarding the causation of the
19 Fort Totten incident, those appear to be your conclusions, not
20 those of the Signal and Train Control group; is that correct?

21 MR. HIELMANN: I did not state a cause. Mr. Payan asked
22 me how we arrived at the parasitic oscillation, how we discovered
23 it. So I just led through the investigation process that we went
24 through chronologically. I did not come up with a conclusion.

25 MR. ILLENBERG: I thought I heard a conclusion, but --

1 okay. Okay, as you are aware, Alstom does not share the view that
2 the track circuit modules are the cause of the failed track
3 circuit at Fort Totten.

4 CHAIRMAN SUMWALT: Excuse me. We're having trouble
5 hearing you.

6 MR. ILLENBERG: Oh, I'm sorry.

7 CHAIRMAN SUMWALT: And so -- I don't know if it's a
8 combination between you or the audio booth, but I want to make
9 sure we're getting this all on the record, so --

10 MR. ILLENBERG: Okay. I will try to get closer to the
11 mic, thank you.

12 CHAIRMAN SUMWALT: That's fine. Thank you. And also
13 want the audio booth to be helping us out, too. Thank you.

14 MR. ILLENBERG: Okay. Are you aware that Alstom's
15 analysis of the facts indicates the probable root cause of the
16 failed train detection at Fort Totten was the increasing of the
17 power level required by the installation of the US&S -- response
18 within the GRS track circuit and that this was done against
19 Alstom's recommendation?

20 MR. HIELMANN: No, I'm not aware of Alstom recommending
21 against increasing the power level.

22 MR. ILLENBERG: Okay. I will get to that in a moment,
23 okay. In your testimony yesterday, you referred to the power
24 traction -- program. You testified that the substation return and
25 -- were replaced so that WMATA could increase from six to eight-

1 car trains. You also mentioned that a track circuit replacement
2 program was being conducted in two parts, the initial pilot and
3 three stations on the Orange Line and then 22 stations throughout
4 the rest of the system. At Fort Totten, is it true that WMATA
5 installed a high-current substation return bond at location
6 B2311-71 in December of 2007?

7 MR. HIELMANN: That's correct.

8 MR. ILLENBERG: And on June 17th, 2009, isn't it true
9 that WMATA installed a regular -- bond at track circuit location
10 B2304+33?

11 MR. HIELMANN: That's also correct.

12 MR. ILLENBERG: And that these were replacing the
13 original GRS bonds with US&S bonds?

14 MR. HIELMANN: That's correct.

15 MR. ILLENBERG: You testified yesterday that there were
16 communications between WMATA and the equipment manufacturers
17 regarding the mixing of this equipment. In fact, you said the
18 author of the October 6, 2006 -- engineering bulletin,
19 Exhibit P2-f, told you that both manufacturers told him that the
20 bonds were compatible, but you said that neither manufacturer
21 provided WMATA with any documentation to confirm the US&S bonds
22 were compatible with the GRS track circuit. Mr. Hielmann, are you
23 aware that on September 7th, 2004, Alstom advised WMATA, Alstom
24 believes, and I'm quoting, "Alstom believes that the use of third-
25 party components in the absence of rigorous design and safety

1 standards presents not only a customer quality issue, but also
2 constitutes a serious and increasing risk to overall signaling
3 system safety. The signaling industry has had many suppliers, but
4 very few possess the critical core competencies required to design
5 and produce safety critical signaling components. Alstom accepts
6 no liability for any product that comprises not only on parts
7 without, as a minimum, a prior knowledge and subsequent approval
8 from the design authority and the site safety officer in
9 Rochester. Alstom will not provide support to resolve problem
10 product line issues that are not consistent with 100 percent
11 content."

12 Well, one product line has been highlighted here, that
13 this is a much bigger issue as it relates to rework and
14 maintenance of train control systems and constitutes components of
15 all vital products, relays, signals, interlockings, track
16 circuits, et cetera. The justification that leads customers to
17 choose components must include an assessment of the impacts to
18 system safety and quality, first and foremost.

19 Mr. Chairman, I would like to offer into the record
20 Alstom's September 7th, 2004 letter and associated distribution
21 list.

22 CHAIRMAN SUMWALT: Thank you. We'll take that under
23 consideration. Certainly, we'll -- let's get an answer from the
24 witness first and then we'll come back to that issue at hand.

25 MR. ILLENBERG: Okay.

1 MR. HIELMANN: In answer to your question, I believe you
2 started asking me if I was familiar. I am not familiar with that
3 correspondence.

4 MR. ILLENBERG: Okay. I will point out that
5 distribution lists, that you received a copy of that letter.

6 CHAIRMAN SUMWALT: Okay, thank you. We will enter that
7 as an exhibit and Mr. Dobranetski, that will be -- the title of
8 this document is what?

9 MR. ILLENBERG: I will read you the title of the
10 document. It's a letter, the subject is "Impacts of the Use of
11 Non-OEM Manufactured Components".

12 CHAIRMAN SUMWALT: Thanks. If we could get a copy of
13 that right now, that will be good.

14 MR. ILLENBERG: Okay, let me continue. You mentioned --

15 CHAIRMAN SUMWALT: Hang on. Let's just take care of
16 this particular matter.

17 MR. ILLENBERG: I'm sorry.

18 CHAIRMAN SUMWALT: We're going to enter it as an
19 exhibit, but we want to get this cleared up first. Thank you.

20 HEARING OFFICER DOBRANETSKI: This will be Exhibit P2-m.

21 CHAIRMAN SUMWALT: Yes, I would agree this should be
22 entered as an exhibit and did you say P2-n, November?

23 HEARING OFFICER DOBRANETSKI: M.

24 CHAIRMAN SUMWALT: Mike, P2?

25 HEARING OFFICER DOBRANETSKI: Mike.

1 CHAIRMAN SUMWALT: Papa-2-Mike. And I believe there's
2 enough copies for the parties right now; is that correct?

3 MR. ILLENBERG: Yeah, there should be enough copies.
4 One copy per table is what we thought we would have.

5 CHAIRMAN SUMWALT: That will be fine. Ms. Mason will be
6 distributing those to the parties at this time and this document
7 has been entered into the exhibits.

8 I am aware that you pointed out that Mr. Hielmann was on
9 the distribution list. Do you have any verification of mailing
10 confirmation, distribution?

11 MR. ILLENBERG: The only thing we have at this point in
12 time is a copy of the distribution list. We have no confirmation
13 of who actually received that document.

14 CHAIRMAN SUMWALT: I understand. Thank you. So we're
15 going to continue with this line of questioning and I think it's
16 important. However, we're going to go for a couple more minutes.
17 We've asked the parties to keep their questions to about 10
18 minutes. We'll go for a second round, so you will have the
19 opportunity to come back. But we'll wrap this up. This was
20 agreed to in the pre-hearing conference and so we will -- you've
21 got about a minute or so to finish your particular point here and
22 then we'll come back.

23 MR. ILLENBERG: Okay. I do have a couple more questions
24 related to this exact topic and I would like to finish those.

25 HEARING OFFICER DOBRANETSKI: Excuse me, Mr. Chairman.

1 In this exhibit, there's nothing on it that says that it went to
2 WMATA or who it went to, if it did go to WMATA. Is there another
3 cover letter?

4 MR. ILLENBERG: No, there's a distribution list
5 attached. There's something like a 19-page distribution list.
6 And the second-to-the-last page of the distribution list is a list
7 of all the people who -- all the Washington Metro people who were
8 supposed to receive this letter.

9 HEARING OFFICER DOBRANETSKI: Okay, thank you. This
10 went to all of your customers?

11 MR. ILLENBERG: Yes, it did.

12 CHAIRMAN SUMWALT: There are literally how many people
13 on this distribution list?

14 MR. ILLENBERG: There are 19 pages. There are hundreds
15 of people on the list.

16 CHAIRMAN SUMWALT: Yeah, because the print is so small
17 that I can barely even see it, so it would be --

18 MR. ILLENBERG: We have provided a copy of this
19 electronically to Mr. Payan and we would be happy to provide a
20 copy electronically to Mr. Dobranetski.

21 HEARING OFFICER DOBRANETSKI: I would certainly
22 appreciate receiving an electronic copy.

23 MR. ILLENBERG: Okay. I will try to do that within --
24 by Friday.

25 HEARING OFFICER DOBRANETSKI: Thank you.

1 CHAIRMAN SUMWALT: Okay. So what we're going to do here
2 is we're going to -- I want you to finish up with this particular
3 line of questioning because we've taken up some time
4 administratively from you while we entered it as an exhibit, and
5 then we're going to move on. I doubt there may not be any other
6 parties, but these are the rules that we outlined in the
7 pre-hearing conference that we are going to have 10-minute rounds,
8 so we're going to stick with those rules. We'll go around the
9 table again and then you can come back again.

10 MR. ILLENBERG: Okay, thank you.

11 CHAIRMAN SUMWALT: So please finish this particular line
12 of questioning.

13 MR. ILLENBERG: Okay. Mr. Hielmann, you mentioned
14 before that the author of Exhibit P2-f, the October 6, 2006 --
15 engineering bulletin spoke to Alstom and US&S. The author of that
16 bulletin was John Glansthrop (ph.); is that correct?

17 MR. ILLENBERG: Johannes Glansthrop (ph.).

18 MR. ILLENBERG: Johannes, thank you. Prior to authoring
19 this bulletin, Mr. Glansthrop contacted Alstom regarding WMATA's
20 intention to mix US&S impedance bonds with the GRS track circuit
21 module and was told Alstom would not recommend the mixing of
22 equipment, Alstom could not consent to the mixing of equipment,
23 and substantial testing would have to be conducted from a safety
24 standpoint before Alstom could give its approval. Mr. Hielmann,
25 can we agree that despite these written and oral warnings, WMATA

1 went ahead and mixed US&S impedance bonds with the original GRS
2 track circuit modules at Fort Totten?

3 MR. HIELMANN: The oral warning that you're speaking of
4 now --

5 MR. ILLENBERG: Is the response to --

6 MR. HIELMANN: -- I have no record of. I have
7 documentation here in the engineering bulletin from Mr. Glansthrop
8 that says that discussions with the designers of US&S and Alstom
9 -- and that's where the engineering bulleting processed from.

10 MR. ILLENBERG: Okay, I -- okay. I understand.

11 CHAIRMAN SUMWALT: Thank you very much. We'll continue
12 on and then come back for a second round.

13 Yeah, before we go on, our general counsel is asking me,
14 do you -- Mr. Illenberg, do you have -- you're accounting of
15 basically hearsay. Do you have documentation of what that
16 employee was that heard this information?

17 MR. ILLENBERG: I have personally discussed this with
18 three different individuals who were contacted by Mr. Glansthrop
19 and have -- I have no written documentation, but I verbally -- I
20 discussed this with them and my question is based on their
21 responses.

22 CHAIRMAN SUMWALT: Okay, thank you. We'll come back to
23 that issue. Now, we'll go to Ansaldo STS USA.

24 MR. PASCOE: At this time, Mr. Chairman, we have no
25 questions.

1 CHAIRMAN SUMWALT: No questions, thanks. FRA.

2 MR. McFARLIN: Yes, thank you. Good morning. A few
3 questions. Mr. Hiller first, please. Just attempting to quantify
4 WMATA's effort to belly the 1000 Series cars. Post-accident and
5 to date, what kind of percentages of trains has that been done?

6 MR. HILLER: To my knowledge, I believe 100 percent of
7 the 1000 Series fleet is operated in the bellies of the trains
8 that are put out every day.

9 MR. McFARLIN: Okay. And second to that question is has
10 there been or has it been discussed of any speed restriction for
11 trains with 1000 Series cars?

12 MR. HILLER: It has not.

13 MR. McFARLIN: Thank you.

14 Mr. Nabb, a few questions regarding work orders. I
15 think I have notes that there are three different types, but I
16 know there's at least the incident work orders and the corrective
17 maintenance work orders and, I think, preventative work
18 maintenance work orders. But in any case, regarding work orders,
19 could you describe briefly the process of who and how supervision
20 or management reviews the effect of closing or response to work
21 orders?

22 MR. NABB: Okay. Maximo is our maintenance and
23 materials management system. In April and May of 2009, we
24 upgraded to Version 6 of this Maximo system. As part of that
25 process, we were able, in there, to configure specific dashboards

1 that look at corrective maintenance work orders and preventative
2 maintenance work orders on those dashboards, particularly
3 configured one for supervisors that look at the corrective
4 maintenance and preventative maintenance within their specific
5 realms of responsibility.

6 And a second set of dashboards for the region managers,
7 assistant superintendents, superintendent, and myself to look at
8 what is a more global picture of the actions that are taking place
9 to resolve or correct the problems or complete the preventative
10 maintenance work orders. So there are specific dashboards in the
11 Maximo system that they refer to for that. In fact, it comes up
12 on their opening screen when they open it, so it is immediately
13 displayed to them.

14 MR. McFARLIN: Thank you. Then I'd like to ask briefly
15 about the control operator's displays in the operations control
16 center in regard to view of the system and the train movements.
17 Would that be your area?

18 MR. NABB: No, it would not.

19 MR. McFARLIN: Don't tell me that person's not here.
20 I'm sorry. Would that be Mr. Hielmann?

21 MR. KLEJST: I can assist on a limited basis.

22 MR. McFARLIN: Okay. Well, it's kind of a general or
23 broad question, but in regard to tracking visually movements of
24 trains; obviously, there are many. Does your system use what we
25 would commonly refer to as a train ID or some form of identifying

1 each individual train?

2 MR. KLEJST: Yes.

3 MR. McFARLIN: Thank you. If there is a loss of shunt
4 experienced, is there any action that results regarding the train
5 ID that must be noticed or some action taken by the control
6 operator to rectify the fact that that ID was affected or lost,
7 anything of that regard?

8 MR. KLEJST: When you say the control operator, you're
9 talking about the person at central control observing --

10 MR. McFARLIN: Yes, sir.

11 MR. KLEJST: -- the loss of train detection?

12 MR. McFARLIN: Yes.

13 MR. KLEJST: Not necessarily the case that he would be
14 able to observe that. He has other duties and it's a flashing in
15 the fire that just happens momentarily if it does. So I don't
16 know that the controller could be held accountable for catching a
17 momentary loss of train detection. For one thing, the computer
18 system that the controller is using is a non-vital system, for
19 those who are not familiar with the term vital, I know you are.
20 But the vital equipment that provides for the safety of train
21 movement is designed to be failsafe.

22 The computer that is used for automatic train
23 supervision at central control operation is not designed failsafe.
24 So you can't 100 percent trust everything that's on there, not
25 being designed failsafe, it's possible for it just to fail in any

1 manner, which makes it less -- the information you're getting from
2 it less reliable in that respect.

3 MR. McFARLIN: Thank you. To clarify on my part, I was
4 really only asking if there is any change to a train's ID that
5 would need to be acknowledged in any way if it has experienced a
6 loss of shunt. For example, it converts from a solid indication
7 to flashing or something.

8 MR. KLEJST: I don't know that I could answer that. We
9 would need to get the software programmer with us to do that.
10 Maybe Mr. Kubicek would know from his experience during the
11 investigation, but I don't know. At least what I know to date,
12 the ID stays consistent is what I've witnessed on my part.

13 MR. McFARLIN: Thank you.

14 And one last question for Mr. Nabb related to the eight
15 instances of parasitic oscillation being found post-accident in
16 the system-wide testing for such. You made the statement that
17 those were all corrected. Could you please share with us what
18 constituted corrected? In short description.

19 MR. NABB: That we took the necessary action to correct
20 that. I would have to go back to the individual records of those
21 eight circuits and look at exactly what the remedy was that was in
22 there. I don't think it was, in other words, a standard remedy
23 such as replacing the modules or something like that. I would
24 have to look at those individual records to say specific what
25 specific action was done. I do know that there was a tremendous

1 amount of documentation recorded from these tests and that
2 documentation was submitted to the engineering department upon the
3 completion of the task. So I could get you those records, I do
4 not have them with me for those eight circuits.

5 MR. McFARLIN: Well, I would suggest that given the fact
6 that actual conditions similar were found, the corrective action
7 taken in descriptive terms may be warranted in this process and
8 should be made part of the public docket.

9 MR. NABB: I can make those records available.

10 CHAIRMAN SUMWALT: Okay, we'd like to have those.

11 HEARING OFFICER DOBRANETSKI: Okay.

12 CHAIRMAN SUMWALT: Let's get a description of what it is
13 and when you can provide those, Mr. Nabb.

14 MR. NABB: The description will be the actions that were
15 taken to correct the parasitic oscillations and I should be able
16 to provide that in a week with the listing of the circuits.

17 CHAIRMAN SUMWALT: That would be good. You'll send that
18 to Mr. Dobranetski. Thank you very much.

19 MR. McFARLIN: Thank you. And one last question,
20 Mr. Nabb, again regarding those eight instances in eight separate
21 locations, was past data reviewed at each of those locations and
22 if so, did that data indicate loss of shunt experienced in
23 conjunction with those conditions?

24 MR. NABB: I don't have an answer to that. I don't know
25 if the -- it was a historical analysis done of all the circuits in

1 the system at that time. That would not be something that I would
2 routinely expect the technicians would have done. That is more --
3 an analysis function of that nature would be something more that
4 would be undertaken by the engineering department to analyze if
5 there are any historical trends showing on these circuits.

6 MR. McFARLIN: Well, could I request that WMATA include
7 an answer to that question within this document of what corrective
8 action was taken? In other words, include any data review of
9 history of those locations that indicated failure of the track
10 circuits.

11 MR. NABB: Yes.

12 CHAIRMAN SUMWALT: Okay, good. So that will be included
13 with the previously mentioned document.

14 MR. McFARLIN: Thank you. And that's all I have.

15 CHAIRMAN SUMWALT: Thank you. We'll go for round two
16 and how many parties -- if you will, just raise your hands. How
17 many parties would like to go for the second -- okay. So we'll
18 just take it in turn. Mr. Flanigon with the FTA, any follow up?

19 MR. FLANIGON: No follow up, sir.

20 CHAIRMAN SUMWALT: Thank you. TOC?

21 MR. MADISON: Just one follow-up question. This is to
22 Mr. Hiller. Are you aware that the TOC had requested
23 documentation of any analysis regarding the decision to belly the
24 1000 Series cars?

25 MR. HILLER: Yes, I'm aware that there was a request to

1 the safety department requesting some validation for this and I
2 was -- I did provide a response to Mr. Kubicek regarding, you
3 know, there's a first order of approximations that show kinetic
4 energy is absorbed during a collision with the first car and this
5 was really based on the -- or the 1996 study provided by the Booz
6 Allen Hamilton. So that was my contribution to that and so yes,
7 answer to your question.

8 MR. MADISON: Thank you. No further questions from TOC.

9 CHAIRMAN SUMWALT: Okay, WMATA.

10 CHIEF TABORN: Mr. Chairman, I have one question for
11 Mr. Hielmann. After the accident, was parasitic oscillation found
12 in circuits with all GRS equipment?

13 MR. HIELMANN: Yes, as a matter of fact. I don't know
14 if that's the case for the eight locations that Mr. Nabb referred
15 to, but the engineering group spent several weeks in the field
16 following the accident investigation, testing track circuits that
17 were reported to have timing anomalies in the loss of shunt tool
18 data and we did find parasitic oscillation in a number of those
19 circuits out of approximately 100 circuits tested by
20 September 4th. We had discovered approximately 18 percent of
21 those track circuits that were 100 percent GRS track circuits had
22 parasitic oscillation.

23 CHIEF TABORN: Thank you very much.

24 CHAIRMAN SUMWALT: Washington DC Fire and EMS
25 Department?

1 CHIEF SCHULTZ: Thank you, one question. I think it's
2 probably most appropriate by Mr. Kubicek. My understanding is
3 that general orders, safety memorandums, are passed down and I
4 think I heard testimony that employees are required to sign as
5 acknowledgement of those. Is there a compliance mechanism in
6 place that assures compliance with that and if so, can you
7 describe it?

8 MR. KUBICEK: The compliance mechanism would be with our
9 quality control. Once the, you know, formal process is
10 established and identified, we would let the respective
11 departments start generating their information, give them time to,
12 you know, stabilize their process, and then we would start
13 bringing in our quality control people to start, you know, their
14 findings and reviews to make sure that they're adhering to their
15 standards.

16 CHIEF SCHULTZ: Thank you.

17 CHAIRMAN SUMWALT: Thank you. ATU.

18 MS. JETER: Did the Authority, or how did the Authority
19 alert the operators that there was a possibility of the occurrence
20 of them not being able to read the train ahead of them because of
21 the activity that took place at the Rosslyn station, at -- I think
22 you said Potomac Avenue yesterday and the Fort Totten incident.
23 Have the operators been alerted to the fact that there is a
24 possibility that because of this occurrence or this anomaly that
25 they will not be able to see or read the train ahead of them?

1 MR. KUBICEK: As far as a formal bulletin, that's why we
2 went from an ATO operation to a manual operation and we were
3 working with our engineering staff on that. We did put out some
4 letters to describe that we wanted to stop everybody at the eight-
5 car marker, but into specific details, can I comment that we
6 released a series of letters on that other than our meetings with
7 the union and respective employees.

8 MS. JETER: After the original incident that gave rise
9 to this taking place, the one that happened at Rosslyn, was there
10 an alert put out to operators that there was a possibility,
11 because they were in ATO then up until the Fort Totten incident?

12 MR. KUBICEK: Since it's a little bit before my time,
13 Mr. Hielmann might have a little bit more insight on that, at
14 Rosslyn.

15 MR. HIELMANN: In the company newsletter, there was a
16 write-up awarding and also at a public awards ceremony actually in
17 this room, where General Manager Dick White awarded both of the
18 operators that prevented collisions in that incident and then both
19 of those operators and the entire incident was published in the
20 company newsletter, so everyone in the company was apprised of
21 that incident.

22 MS. JETER: Aren't there specific NTOs or bulletins that
23 are given to operators when there is something that you want them
24 to know, something that you want them to be aware of? Isn't there
25 a specific bulletin that's given to them?

1 MR. HIELMANN: Yes, there is. In their drop slips, in
2 their instructions, and I'd just have to go back through the
3 historical information to see what we corresponded to the
4 operators.

5 MS. JETER: Thank you.

6 CHAIRMAN SUMWALT: Thank you. Alstom.

7 MR. ILLENBERG: Just a few follow-up questions for
8 Mr. Hielmann. Since the June 22nd Fort Totten incident, has WMATA
9 changed its practice regarding the -- in their GRS track circuit
10 equipment with US&S impedance bonds?

11 MR. HIELMANN: Yes, we have, as I explained, I think,
12 yesterday. We've changed the process for the Ansaldo track
13 circuit replacement in a manner that the impedance bonds are
14 replaced simultaneously with the track circuit modules so that
15 there are no adjustments required to a GRS track circuit in the
16 process.

17 MR. ILLENBERG: Thank you. Mr. Hielmann, on page 11 of
18 the Signal and Train Control Group Report, Exhibit L, it states
19 that after the US&S high-current substation return bond at
20 B2311-071 was installed on December 12th, 2007, the track circuit
21 began bobbing between trains' movements and continued
22 intermittently until the day of the accident. And page 7 of the
23 same report, it states that immediately after the US&S impedance
24 bond at B2304-33 was installed on June 17th, 2009, the track
25 circuit began bobbing and exhibiting abnormal behavior.

1 Mr. Hielmann, was WMATA aware of complaints by the maintenance
2 crews about compatibility of US&S bonds with the GRS original
3 track circuit equipment?

4 MR. HIELMANN: You say complaints from the maintenance
5 crews?

6 MR. ILLENBERG: Yes.

7 MR. HIELMANN: WMATA was aware of complaints from the
8 maintenance crews. The maintenance crews are part of WMATA they
9 were talking about, so --

10 MR. ILLENBERG: I'm speaking of WMATA management.

11 MR. HIELMANN: I was aware of concerns.

12 MR. ILLENBERG: And what were those concerns?

13 MR. HIELMANN: About compatibility issues stated. Not
14 what the compatibility problem was, but that there was a concern
15 about compatibility and that is the reason why Mr. Glansthrop
16 produced the engineering bulletin after he did his research.

17 MR. ILLENBERG: Okay. I'd like to just read some
18 comments from some of the testimony of the maintenance people and
19 I'd like to read a couple of these. "All I know is that when
20 those bonds were put in, there were problems. It was not one
21 bond, they're never right. It's just they're never right. We
22 complained about -- said it does this, how can you do this?" On
23 another, WMATA maintenance personnel told the NTSB that this issue
24 of US&S bond and Alstom track circuit incompatibility had been
25 raised to management but nothing was done to correct the problem.

1 He said the problem "fell on deaf ears." What has WMATA done to
2 address these comments?

3 MR. HIELMANN: As you recall, I said that during the
4 investigation one of the steps of the investigation was that the
5 NTSB investigator and myself went to several train control rooms.
6 We pulled data from the log entries that were made in those rooms,
7 looking for this type of problem that they were talking about, a
8 compatibility problem. We did not find any reason to consider a
9 compatibility problem.

10 We know that the impedance, the load impedance, of the
11 two are different, but we didn't find any other evidence of a
12 compatibility problem. During the process of changing out bonds,
13 the maintainers had to also replace the connectors that connect
14 the bond to the rails and whenever there was a faulty connection
15 in that process that would've created problems with the track
16 circuit --

17 MR. ILLENBERG: Okay.

18 MR. HIELMANN: We do know -- if you'll let me finish.
19 We do know that from the log entries that that is how the problems
20 where the supposed compatibility was reported, was corrected by
21 correcting those connections.

22 MR. ILLENBERG: Mr. Chairman, Alstom would like to offer
23 into evidence the transcripts of the June 27th, 2009 NTSB
24 interviews of Thomas Paceski (ph.), WMATA AA mechanic;
25 Ken Tiffner (ph.), WMATA AA technician; Bruce Rybel (ph.), WMATA

1 AA mechanic; and Christopher Lucas, WMATA technician.

2 CHAIRMAN SUMWALT: Well, they're in the docket. They're
3 already in the public docket for the accident. I have them in my
4 hands.

5 MR. ILLENBERG: Okay.

6 CHAIRMAN SUMWALT: So --

7 MR. ILLENBERG: So they are part of the public record,
8 then?

9 CHAIRMAN SUMWALT: Yes, indeed. I pulled them off the
10 public webpage last night, so they are in the docket. Do they
11 need to be part of the exhibits?

12 HEARING OFFICER DOBRANETSKI: No, they don't. Since
13 they're already in the docket, they're already part of the public
14 exhibit.

15 MR. ILLENBERG: Okay. Thank you for that clarification.

16 CHAIRMAN SUMWALT: Yes, sir. Thank you.

17 MR. ILLENBERG: Okay, I have just one more question, if
18 I may?

19 CHAIRMAN SUMWALT: Yes, you may. You're under your
20 time, thank you.

21 MR. ILLENBERG: Okay. Mr. Hielmann, going back to Fort
22 Totten, and we discussed previously, in my previous questions, the
23 installation of the US&S bonds on December 12th and that the
24 transmit power level was increased to 70 percent -- and we didn't
25 mention that before, but the report says the power level was

1 increased to 70 percent -- and then on June 17th at B2304+33 the
2 power level was increased from 30 percent to 55 percent. And my
3 question to you, Mr. Hielmann, is before the changes in the
4 impedance bond and the corresponding increases in the power levels
5 within the track circuits, were there any reports of incidents of
6 loss of train detection in Track Circuits B2304 or B2312 at Fort
7 Totten?

8 MR. HIELMANN: You made a lot of statements before you
9 asked that question. One of your statements was power level
10 increased to 70 percent. I don't have any knowledge of --

11 MR. ILLENBERG: I'm quoting that from the Signal and
12 Train Control Group report.

13 MR. HIELMANN: Okay. That is not for the B2304 track
14 circuit, then?

15 MR. ILLENBERG: No.

16 MR. HIELMANN: Okay. No, I'm not aware of any other
17 train detection problems from a prior time. As a matter of fact,
18 the NTSB and myself went through records for the B2304 track
19 circuit and that region for train detection loss all the way back
20 to prior to December of 2007 and found that it only began
21 occurring June 17th of 2009.

22 MR. ILLENBERG: Okay. I have no other questions.

23 CHAIRMAN SUMWALT: Thank you very much. And to Ansaldo.

24 MR. PASCOE: We have no questions at this time,
25 Chairman.

1 CHAIRMAN SUMWALT: Thank you. FRA.

2 MR. McFARLIN: Yes, thank you. Just one, please,
3 Mr. Hielmann. Does WMATA have, let's say, organized historic
4 records of what we would normally refer to as false proceed signal
5 failures or train control failures unsafe to the movement of a
6 train?

7 MR. HIELMANN: No, I don't believe there is a compiled
8 record of all incidents.

9 MR. McFARLIN: Thank you.

10 CHAIRMAN SUMWALT: Thank you. Are there any further
11 questions from the parties before we go back to the Technical
12 Panel? If there are, please raise your hand.

13 (No response.)

14 CHAIRMAN SUMWALT: Seeing none, we will move on.
15 Ms. Jeter, in your last round of questioning, did you specifically
16 ask for documentation? I'm not under the impression that you did.
17 In your first round of questioning, you did, and we've gotten that
18 into the record. Was there something that you requested from the
19 second round? I was not aware of that. Somebody sent me an
20 e-mail saying that you had, so I just wanted to verify.

21 Okay, are there any follow-ups from the Technical Panel?

22 (No response.)

23 CHAIRMAN SUMWALT: We'll now go to the Board of Inquiry
24 and starting with Mr. Ritter.

25 MR. RITTER: Yes, I have a couple of questions for

1 Mr. Hielmann. You stated that, I guess, in testing modules that
2 of 100 tested, 18 percent had parasitic oscillation that were all
3 GRS equipment and I guess the question that comes to mind is, are
4 all these -- what is it about the modules that makes them
5 susceptible to parasitic oscillation?

6 MR. HIELMANN: I don't think I can answer that question.

7 MR. RITTER: Okay. So did you find cases, then, with
8 mixed equipment and then cases where the equipment wasn't mixed
9 and you still had parasitic oscillations occur?

10 MR. HIELMANN: I would say yes to your question except
11 that there was only case I know of with mixed equipment.

12 MR. RITTER: And what case was that?

13 MR. HIELMANN: Fort Totten collision location.

14 MR. RITTER: Okay. This may have been answered
15 yesterday, but we go back to the Rosslyn incident. I know you
16 stated that you believe the probable reason for the loss of train
17 detection there was most likely the cabling; is that correct?

18 MR. HIELMANN: At the time of that investigation, it was
19 the only theoretical solution we had for the symptoms that were
20 present.

21 MR. RITTER: Okay.

22 MR. HIELMANN: We have no evidence otherwise, at this
23 point. The two modules, transmitter and receiver modules that
24 were in the incident at Rosslyn, were subsequently tested in the
25 training lab when we were doing the tests from the Fort Totten

1 modules and we found that they did produce parasitic oscillations
2 and they were turned over to Alstom for further testing.

3 MR. RITTER: I guess I got -- that answered my next
4 question. So was there mixed, so-called mixed, equipment in terms
5 of the impedance bonds in the Rosslyn case?

6 MR. HIELMANN: No, sir.

7 MR. RITTER: Okay. So I heard -- I'm trying to resolve
8 a question that came into my mind when I heard that there were
9 eight cases, I guess, that were found after the test procedure was
10 developed, there were eight track circuits that had parasitic
11 oscillation. But Mr. Hielmann, you mentioned that out of 100
12 tests, 18 percent had parasitic oscillation, so what's the
13 difference in the numbers there?

14 MR. HIELMANN: I believe the eight that Mr. Nabb refers
15 to are eight track circuits that failed the test procedure. The
16 presence of the parasitic oscillation is not threatening except
17 under certain circumstances where it fails in several areas. It
18 could be a contributing issue later, but what we were testing for
19 in the procedure that he implemented throughout the system was not
20 only parasitic oscillation, but also a communication of that
21 parasitic oscillation between the transmitter module and the
22 receiver module of the track circuit, however slight that might've
23 been. If we could measure that, then that was considered an area
24 we had to investigate further.

25 The procedure is WMATA's Automatic Train Control Test

1 Procedure T163 -- it's published in October -- and in that
2 procedure, if you found both the parasitic oscillation and the
3 communication path being used, then you had to take additional
4 tests. If those tests failed, then the conclusion was, according
5 to the procedure, replace the modules. In the case of the 18
6 percent that I mentioned, I don't know the exact number; I'm using
7 the 18 percent based on the numbers that I know. It was slightly
8 less than 100 track circuits. The parasitic oscillation that we
9 saw on those track circuits was not necessarily being communicated
10 to another module.

11 MR. RITTER: So I assume that those -- it's really
12 related to the path and is that a fair statement? Because where
13 are those modules that exhibited parasitic oscillation? Are they
14 still in the system?

15 MR. HIELMANN: Yes, they are still in the system. In
16 order for the failure mode that we believe we see on the track
17 circuit with the parasitic oscillation communicating between the
18 transmitter and the receiver without having to go through the
19 rails, in order for that to happen you need both the parasitic
20 oscillation to be generated in the first place and then you also
21 need to have a path that is carrying that signal to the receiver.

22 MR. RITTER: So are the modules, all the power levels
23 that have been, I guess, used in terms of track circuit
24 adjustments, are those -- are the modules compatible with these
25 different power levels, in your opinion?

1 MR. HIELMANN: The power levels on the modules are from
2 zero to 100 percent with tap settings, so there's a fixed number,
3 possibly 10 different power level settings that you can use and
4 they're in steps. As far as the modules go, they can be used up
5 to 100 percent. There is a restriction placed on them by GRS in
6 their documentation not to exceed 60 percent on certain types of
7 impedance bonds because the number of coils in the bonds changes
8 the parameters a little bit.

9 MR. RITTER: So did you have to exceed 60 percent to do
10 any of the impedance bond replacement activity?

11 MR. HIELMANN: Let me clarify about the 60 percent.
12 The 60 percent is for track circuits that use TWC on the
13 transmitter end of the track circuit. TWC is train to wayside
14 communication. That is the limiting factor. If they have that
15 type of impedance bond installed, then they're limited to 60
16 percent. I can't answer your question because I'm not the one out
17 there doing the adjustments and when you do the adjustments, the
18 requirement in PMI 11000, which gives the instructions at the time
19 of accident --

20 MR. RITTER: Okay.

21 MR. HIELMANN: -- the instructions in there, in two
22 different places, offered a warning not to exceed 60 percent if
23 it's a TWC-style bond.

24 MR. RITTER: Okay. So then was there a TWC-style bond
25 in Fort Totten?

1 MR. HIELMANN: Not in the incident track, sir.

2 MR. RITTER: Okay. So in other words, then, anywhere --
3 any setting from zero to 100 percent would be compatible with the
4 design?

5 MR. HIELMANN: That's correct.

6 MR. RITTER: Okay. I don't have any other questions.

7 CHAIRMAN SUMWALT: Thank you, Mr. Ritter.

8 Now, Dr. Kolly?

9 DR. KOLLY: Yes, I have a few questions. Mr. Hiller,
10 from a crashworthiness perspective, was the Fort Totten collision
11 a high-energy collision?

12 MR. HILLER: Yes, sir. I believe it was.

13 DR. KOLLY: And how does that compare to the conditions
14 that you're conducting these tests? You said you're conducting
15 tests and there are some guidance where you have a 15 to a 20-mile
16 per hour collision that you're looking at the crashworthiness of
17 the car; the conditions of the Fort Totten collision, how does
18 that compare?

19 MR. HILLER: The Fort Totten collision, in my opinion,
20 was much higher than 20 miles an hour. The speeds of 15
21 kilometers per hour and 20 miles per hour, these are standards
22 that are not entirely adopted -- well, they're not adopted by
23 metros, heavy transit. There is no crashworthy "requirement" for
24 systems like ours. Best practice says we should include those, so
25 we do.

1 Now, there has to be a threshold at which the passengers
2 will experience an acceleration while they're in the car once they
3 experience a collision and we use recommendations from APTA about
4 that, it's like five g's and then the surrounding environment must
5 be in consideration. So those are some of the reasons why we use
6 20 at the threshold, because as you go higher and higher with
7 this, you're going to have more weight associated with energy
8 management, more interior weight associated with fixtures that
9 will minimize the accelerations of the passengers, themselves. So
10 I hope I've answered your question.

11 DR. KOLLY: Yes, you have. With regard to the collision
12 at Fort Totten, did those specific cars react as you might have
13 anticipated under those conditions? Was the damage what you may
14 have anticipated at those particular speeds?

15 MR. HILLER: Not knowing the speed but knowing the
16 failure mode of not only our transit vehicle and other transit
17 vehicles, I would say yes, it's consistent with that design.

18 DR. KOLLY: Okay. And so you didn't find any particular
19 maintenance issues or repairs or aging deterioration of the
20 railcars, themselves, contributed in a significant way to the
21 damage? It's basically the damage that you saw at the Fort Totten
22 accident was a result of the design of the cars and the operating
23 environment of that collision?

24 MR. HILLER: I would agree with your statement, yes.

25 DR. KOLLY: Okay. With regard to the new series of cars

1 that you're ordering, the 7000 Series cars, would you expect that
2 those conditions of the Fort Totten accident, that there would've
3 been a significant difference in the crashworthiness and
4 survivability?

5 MR. HILLER: I believe the difference would be the
6 telescoping that we saw with the Fort Totten would be a
7 significant difference. I would not expect that.

8 DR. KOLLY: Are you expecting that the 7000 Series cars
9 would be able to withstand that type of an accident and basically,
10 you know, have no significant resulting injuries?

11 MR. HILLER: Again, not knowing the speed, I would not
12 expect that there would be as many, but I would expect there would
13 be resulting injuries, yes.

14 DR. KOLLY: I guess that, you know, it just points out
15 the severity of that particular accident and I guess it really,
16 you know, emphasizes the point that the crashworthiness is really
17 kind of a last thing we should rely upon. We need to prevent
18 these collisions and not rely solely upon the crashworthiness of
19 the cars, themselves. With that in mind, Mr. Hielmann, yesterday
20 you testified that there were at least two incidents and the Fort
21 Totten accident that had one thing in common and you said it was
22 the unsafe failure of the automatic train control system. Did I
23 hear you correctly?

24 MR. HIELMANN: Yes, you did. I said automatic train
25 protection --

1 DR. KOLLY: Okay.

2 MR. HIELMANN: -- but the automatic train protection and
3 the automatic train control system include what is on the tracks,
4 in the equipments rooms, and on the car. And the entire system
5 does.

6 DR. KOLLY: Yes. Okay, thank you. Would you consider
7 those particular failures that you saw or that you know of in
8 those two incidents and the accident, what we -- the term we use
9 in the industry, being a single-point failure? Meaning if there
10 is the one failure there's no backup or redundancy that prevented
11 that failure and that failure, in itself, resulted in the
12 catastrophic condition?

13 MR. HIELMANN: Right. Single-point failures go in the
14 automatic train control vital circuit designs. We have failsafe
15 equipment provided by the manufacturers and failsafe designs
16 around it so that there's a predictable failure mode for any of
17 these pieces of equipment. In the case of, for example, the
18 Potomac Avenue overrun where vital relay failed, when a vital
19 relay function is to prevent the occurrence of something like that
20 and when it fails in the wrong direction, that is, it failed to
21 drop away when energy was removed from it, then that's a single-
22 point failure. Throughout the signaling industry, vital relays,
23 for example, are used on mainline railroads and on transit systems
24 as protection against collisions, derailments, accidents, and many
25 times those vital relays, for example, are a single-point failure

1 if they fail.

2 DR. KOLLY: With that in mind, has WMATA -- have you
3 conducted or had conducted for you a formal engineering review
4 such as, let's say -- I'm sure you're familiar with a failure
5 modes and effect analysis -- of the entire system to look and see
6 are there other instances of single-point failures or unacceptable
7 risk in the system?

8 MR. HIELMANN: Yes. Every one of our contracts
9 requires, on vital equipment, requires the manufacturers to
10 produce the hazard mode and effects analysis for failure, mode and
11 effects analysis for us and categorize all the risks and severity
12 of the risks and the probability of the risks and what is done to
13 mitigate them.

14 DR. KOLLY: So was this, what we're looking at here with
15 the particular failure of the electronic signaling system in this
16 instance of Fort Totten and perhaps the other two, was that
17 identified in that type of an analysis?

18 MR. HIELMANN: Are you asking me if parasitic
19 oscillation was covered in any hazard mode and effects analysis?

20 DR. KOLLY: Yes.

21 MR. HIELMANN: Not to my knowledge.

22 DR. KOLLY: Is there any effort on the part of WMATA to
23 go back and review this type of an analysis to make sure that at
24 least this incorporated. It seems that you have identified a
25 particular failure mode and you're doing all you can to eliminate

1 this intermittent failure mode. Are you, in fact, sure that there
2 are no others existing and what are you doing to ensure that?

3 MR. HIELMANN: We have gone back to our two signaling
4 vendors, major signaling vendors, for WMATA with a request to
5 provide a hazard mode and effects analysis for loss of train
6 detection and because prior to the Rosslyn incident, we had no
7 reason to believe that we were ever going to see a loss of train
8 detection and after the loss of train detection that -- at the
9 Fort Totten site, we've gone back and asked them to analyze the
10 system for that, but I'm retired now, so I don't know what
11 progress has been made on that.

12 DR. KOLLY: Would anyone on the panel know the status of
13 that progress? Mr. Kubicek.

14 MR. KUBICEK: I do know the review is ongoing. I would
15 also like to add to the fact that while we're focusing, you know,
16 tremendously on our day-to-day operations and the engineering and
17 our functions, we're also looking at various redundancy systems,
18 as well. We've brought in, you know, all the major players that,
19 you know, provide train control, looking at our next generation of
20 train control and basically, when we have a critical system, as
21 we've seen, there is -- it is warranted for us to move forward in
22 the future with some form of redundancy. You know, that could be
23 an entirely different train control system in philosophy.

24 I did communicate, like, in January that we're going to
25 be looking at an axle wheel counter, you know, device is a

1 redundant product as an overlay of what we have at this point in
2 time. Is it the right solution for our environment? We won't
3 really know until we get it out there and we start, you know,
4 applying these things and put it in our respective area, but there
5 is ongoing effort with our day-to-day systems as well as what
6 direction we should be moving forward in the future.

7 DR. KOLLY: Okay, thank you. Mr. Chairman, I have no
8 more --

9 CHAIRMAN SUMWALT: Thank you, Dr. Kolly.
10 And Mr. Dobranetski?

11 HEARING OFFICER DOBRANETSKI: Yes, thank you. I just
12 have a few questions. Mr. Kubicek, does WMATA receive federal
13 funding for purchasing new cars?

14 MR. KUBICEK: Yes, sir.

15 HEARING OFFICER DOBRANETSKI: Is this through the FTA?

16 MR. KUBICEK: Through the federal government, yes.

17 HEARING OFFICER DOBRANETSKI: Okay. Are there any
18 requirements that these cars meet any standards or have any
19 specific equipment to get the federal funds?

20 MR. KUBICEK: We have an overall, you know, safety
21 certification process we do. We are required to follow, you know,
22 various, I guess you could say, industry standards, as well.

23 HEARING OFFICER DOBRANETSKI: Okay. But does the
24 federal government put any requirements that you should have?

25 MR. KUBICEK: I can't say that there's any specific, you

1 know, direct guidelines on how we should build it or how we should
2 assemble it or how we should integrate it, but I do know that, you
3 know, there is a funding mechanism, a safety certification, you
4 know, process, the validation of the program. And we do have
5 oversight by them and typically, when a project gets going, that's
6 a meeting of at least a minimum of monthly and more than likely
7 we're in direct contact with them several times a month.

8 HEARING OFFICER DOBRANETSKI: Okay. Has the federal
9 government ever required that you put event recorders on your new
10 equipment?

11 MR. KUBICEK: Not to my knowledge that it was a direct
12 line item segment that was mandated.

13 HEARING OFFICER DOBRANETSKI: It was mandated?

14 MR. KUBICEK: I'm not aware of one that was specifically
15 outlined for us to install event recorders at this time. Again,
16 it falls back into the category, you know, of best practice and as
17 we continue to evolve, it's a very helpful tool in several
18 different areas of our operations.

19 HEARING OFFICER DOBRANETSKI: Okay. I believe we'll get
20 further into that tomorrow when we talk to the Federal Transit
21 Administration. Mr. Hiller, you talked about this 20-mile an hour
22 on a collision speed and it was best practice. Whose best
23 practice is that and is it something that is substantiated by
24 engineering calculations or by actual testing?

25 MR. HILLER: The best practice -- well, first let me

1 speak to the 15 kilometer miles per hour is that ASTM RT-2
2 standard that was just recently released for rail passenger
3 vehicles, so collectively that body has put this number out as a
4 benchmark. The 20-mile-an-hour standard, this evolved in or this
5 appeared in the WMATA 5000 Series as a specification requirement.

6 This was based on, I would assume because I don't know
7 exactly where the 20 came from, but my assumption is that it's
8 just based on energy calculations, weight, the elements required
9 to mitigate some of these energies associated with a 20-mile-an-
10 hour collision and also the overall strength of the vehicle like
11 WMATA, with those 200,000 pound longitudinal -- requirement.

12 HEARING OFFICER DOBRANETSKI: Okay. So it's a consensus
13 number rather than one that has been developed from actual
14 testing?

15 MR. HILLER: I believe so, yes.

16 HEARING OFFICER DOBRANETSKI: Earlier you testified
17 that, you know, if the 1000 Series cars were in the lead they
18 would have substantial damage and as they were, you know, in the
19 belly of the train, is this opinion or do you have some way of
20 confirming or substantiating your statement?

21 MR. HILLER: This is opinion.

22 HEARING OFFICER DOBRANETSKI: Okay, thank you.
23 Mr. Kubicek, several times I've heard stated that you follow a lot
24 of standards, you follow AREMA standards, which is the American
25 Rail Engineering and Maintenance Association; the Federal Railroad

1 Administration standards; other standards. Are these included
2 into your system safety plan that you follow specific standards or
3 do you just take a blanket standard or specific standards from
4 those organizations?

5 MR. KUBICEK: We take a sample of them. We have a
6 safety certification program, you know, from our part, from
7 engineering and maintenance, you assemble that, but at the end of
8 the day it does go through the safety department and they have the
9 final say-so on the certification of these programs.

10 HEARING OFFICER DOBRANETSKI: Okay. Does TOC or FTA
11 ever come back and check to see that you're doing what you say
12 you're doing?

13 MR. KUBICEK: Yes, that's part of their project
14 management oversight that we have with the FTA. And the TOC, I've
15 seen them at the meetings as well.

16 HEARING OFFICER DOBRANETSKI: In the Rosslyn incident,
17 Mr. Hiller, you said that -- or Hielmann, you said this may have
18 been initially thought to have been a cable problem, but since
19 then, you know, you had the track circuit modules and found that
20 they could've been a problem. Why wasn't more testing done at the
21 time that those incidents occurred to find out just what happened
22 and tried to learn from it? Can you comment?

23 MR. HIELMANN: Yeah, and I'll go back to yesterday's
24 testimony and my comments. When you have an intermittent problem
25 and the problem is not present during your testing, you're not

1 going to find the source of the problem. So once we had cut the
2 cable ties at the top of the rack and the problem disappeared, we
3 could've been out there testing for two years and never seen the
4 problem again. It was the deputy general manager's decision at
5 the time, that since we could not locate the problem, we had a
6 theory for it, we tested the theory and it produced the same
7 symptoms as the problem originally had.

8 Now, replace all those parts, get them out of here, get
9 them out and put in new parts and readjust the track circuit and
10 test it; it was okay. We took the parts, the modules, that is,
11 and one of the engineers tested them in his office on power
12 supplies. He checked for crosstalk between different parts of the
13 module and things like that. He examined them carefully with a
14 microscope to see what problems he might be able to find with the
15 modules, and not having found any problems, he set the modules
16 aside until we had the accident at Fort Totten and then he
17 produced them.

18 HEARING OFFICER DOBRANETSKI: Okay. In hindsight, do
19 you think that it would've been better that you would've done the
20 equivalent amount of testing at the Rosslyn incident that you did
21 at the Fort Totten incident, you would've learned more?

22 MR. HIELMANN: Actually, if you can produce an unlimited
23 amount of time for testing like that, there's no telling what
24 could come out of it. But we had a theory that the cables were
25 causing the problem and how that theory worked. We tested that

1 theory and produced exactly the same symptoms. We were relatively
2 convinced that the cables were the problem. So if you know what
3 -- if you think you know what the problem is and you correct it,
4 what other extensive test -- do you understand where I'm going
5 with this? There is no failure mode at the time. So in
6 hindsight, we could've spent more time on it, yes.

7 HEARING OFFICER DOBRANETSKI: Do you -- go ahead.

8 MR. HIELMANN: I think, if anything, what we should've
9 done at that point was turn those modules over to Alstom, for them
10 to test, because you're getting into the track circuit design
11 engineering group now.

12 HEARING OFFICER DOBRANETSKI: Do you today believe it
13 was a cable problem or it was a problem with the track circuits?

14 MR. HIELMANN: I still believe either one of them is
15 possible, that it caused a problem with the -- similar to Fort
16 Totten, where we see parasitic oscillation or it could've been the
17 cable.

18 HEARING OFFICER DOBRANETSKI: Okay, thank you,
19 Mr. Chairman, I have no further questions.

20 CHAIRMAN SUMWALT: Thank you, Mr. Dobranetski. You
21 raised a point a few minutes ago. Does the federal government
22 require WMATA or other transit agencies to meet certain
23 crashworthiness standards? And of course, unfortunately, we know
24 the answer to that is no, because the Federal Transit
25 Administration does not have the statutory authority to enact

1 those requirements and that is why a week ago the full NTSB voted
2 to put those issues on most wanted list of transportation safety
3 improvements to -- for the FTA to seek the statutory authority
4 from Congress so that they can in fact impose crashworthiness
5 standards on rail transit operators. And we would like for them
6 to require that once those standards have been developed, to
7 remove equipment that cannot be modified to meet those standards.

8 So thank you for raising that point so I could follow up
9 on our most wanted list. We think this is very important to have
10 -- for the government to mandate those minimum crashworthiness
11 standards. But as Dr. Kolly pointed out, that should be the last
12 layer of defense. We should be preventing the accident from
13 happening in the first place.

14 Believe it or not, I just have one question and this
15 will be for Mr. Kubicek. Last Friday we had a press conference
16 prior to this public hearing and somebody from the media asked me
17 a question. And it came from discussions in the WMATA board
18 meeting and WMATA Customer Service Operations and Safety Committee
19 meeting the day prior, where this was discussed. The question
20 posed to me was, is WMATA safer to run in manual or in automatic?
21 And I said, I can't answer that and the reason I cannot answer
22 that is because I don't have all the information. So based on
23 what you know now about parasitic oscillation and other factors,
24 so that we can get the answer out there, is WMATA better off, from
25 a safety perspective, running in manual or in ATO?

1 MR. KUBICEK: Wow. In my opinion, at this time we are
2 better off operating in a manual mode operation. I think,
3 inherently, when you go into a full automated train operational
4 mode and you're relying on that system 100 percent -- and we've
5 pointed out a couple of events out there that are catastrophic in
6 their nature when they do happen. On my part, in good faith, I
7 could not recommend going into ATO until we, you know, made the
8 necessary repairs. Are there inherent risks, you know, operating
9 in a manual mode with automatic train protection? Absolutely.

10 There's also railroads out there that operate in manual
11 mode with trip stops. There's also some railroads that have
12 manual mode with, you know, no devices out there. The opinion
13 again is the safest railroad is the one that never moves, but
14 unfortunately we're not in that environment. So at this
15 classification, that's where I would continue to work at. Then
16 once we start getting our repairs, you know, generated, then I
17 would be, you know, more comfortable in going back into an ATO
18 mode operation.

19 CHAIRMAN SUMWALT: Thank you. So basically WMATA has
20 done a risk assessment and as you pointed out, yes, there are some
21 additional risks from running in manual, but on balance, your
22 least risk scenario right now is to run in manual.

23 MR. KUBICEK: Yes, sir.

24 CHAIRMAN SUMWALT: Thank you. Okay, we will take a
25 15-minute break. We will reconvene at 10:50. We are in recess.

1 (Off the record.)

2 (On the record.)

3 CHAIRMAN SUMWALT: Okay, we are back in session and
4 Mr. Dobranetski, if you will please swear in the witnesses for the
5 next panel.

6 (Witnesses sworn.)

7 HEARING OFFICER DOBRANETSKI: Mr. Madison, would you
8 state your full name, your current employer, your title and your
9 company address?

10 MR. MADISON: Yes. My name is Eric Madison. I'm
11 currently employed with the District of Columbia Department of
12 Transportation. I currently serve as transportation planner and
13 also chair of the Tri-State Oversight Committee.

14 HEARING OFFICER DOBRANETSKI: How long have you been in
15 your current position with the D.C. DOT?

16 MR. MADISON: I've been with the Department of
17 Transportation since August of 2003.

18 HEARING OFFICER DOBRANETSKI: And how long have you been
19 the chairman of the TOC?

20 MR. MADISON: Since April of 2009.

21 HEARING OFFICER DOBRANETSKI: What are your duties and
22 responsibilities with TOC?

23 MR. MADISON: Well, as the chair of the Tri-State
24 Oversight Committee, I chair monthly meetings between the TOC
25 members, the WMATA System Safety, and FTA to discuss any safety

1 and security issues affecting Metrorail operations. I also attend
2 any conferences and workshops related to the implementation of the
3 Federal State Safety Oversight Program. I also receive any
4 notifications from the WMATA System Safety members on any
5 incidents or occurrences within the Metrorail system. And that's
6 pretty much it.

7 HEARING OFFICER DOBRANETSKI: Could you pull the
8 microphone closer?

9 CHAIRMAN SUMWALT: Yeah, let's get him some more volume
10 also, please.

11 HEARING OFFICER DOBRANETSKI: Could you provide a brief
12 description of the positions you have held and your other duties
13 and responsibilities and distinguish them from the D.C. DOT from
14 TOC?

15 MR. MADISON: Yes. As an employee of the D.C.
16 Department of Transportation, I currently serve as transportation
17 planner. Prior to that position, I was an operations manager with
18 D.C. DOT, and prior to that I came on with DOT as an
19 administrative management officer.

20 HEARING OFFICER DOBRANETSKI: Okay. And with TOC, are
21 you appointed at TOC by the D.C. DOT?

22 MR. MADISON: Yes, I was appointed by letter in March of
23 2009 and came on.

24 HEARING OFFICER DOBRANETSKI: So your supervision is
25 back with the DCDOT?

1 MR. MADISON: Yes.

2 HEARING OFFICER DOBRANETSKI: Thank you. Mr. Bassett,
3 for the record, please state your full name, your current
4 employer, your title and your company address.

5 MR. BASSETT: My name is Matt Bassett. I work for the
6 Virginia Department of Rail and Public Transportation. My title
7 is Manager of Safety, Security and Emergency Preparedness. My
8 address is 6363 Walker Lane, Suite 500, Alexandria, Virginia. And
9 did I miss anything?

10 HEARING OFFICER DOBRANETSKI: Yes, could you get closer
11 to the microphone?

12 MR. BASSETT: Certainly.

13 HEARING OFFICER DOBRANETSKI: How long have you been in
14 your current position with the Virginia DOT and with TOC?

15 MR. BASSETT: I've worked for the Virginia Department of
16 Rail and Public Transportation since March 2009, and I've been a
17 member of TOC since 2006.

18 HEARING OFFICER DOBRANETSKI: And what are your duties
19 and responsibilities both with your employer and with TOC?

20 MR. BASSETT: My employer hired me to serve full time on
21 the Tri-State Oversight Committee. So my primary job function is
22 to work on the TOC program. That includes duties similar to the
23 ones Mr. Madison noted; meeting with WMATA to discuss incidents
24 and accidents and events relating to the safety and security of
25 the Metrorail system; conducting audits; participating on accident

1 investigations; assisting with their hazard management program;
2 evaluating corrective action plans that may relate to the safety
3 or security of the rail system, and other duties.

4 HEARING OFFICER DOBRANETSKI: And what qualifications do
5 you have for your position?

6 MR. BASSETT: I have gone through the Transportation
7 Safety Institute's rail safety and security certification program.
8 In my previous employment I was also a state safety oversight
9 program manager for the Maryland Department of Transportation,
10 where I also served as a member on the Tri-State Oversight
11 Committee.

12 HEARING OFFICER DOBRANETSKI: Thank you. Mr. Chairman,
13 the witnesses are qualified and the questioning can begin with
14 Mr. Klejst.

15 CHAIRMAN SUMWALT: Thank you, Mr. Dobranetski.
16 Mr. Klejst?

17 MR. KLEJST: Thank you, Mr. Chairman. Good morning.
18 Mr. Bassett, could you please explain how the TOC is organized?

19 MR. BASSETT: Certainly. The Tri-State Oversight
20 Committee is organized as a standing interagency task force
21 between the three jurisdictions of Maryland, the District of
22 Columbia, and Virginia. The TOC is not an independent legal
23 creation such as WMATA; it is a standing working group. This was
24 established out of the requirements of the FTA's promulgation of
25 49 Code of Federal Regulations Part 659, which required that all

1 rail transit agencies which took federal funds were required to
2 have a state -- a designated state oversight agency that would
3 review a rail transit agency's safety and -- system safety and
4 security programs.

5 Obviously, no other rail transit agency in the country
6 runs into three separate jurisdictions such as we have between
7 Maryland, D.C., and Virginia. The three jurisdictions were faced
8 with two options. They could either handle the oversight among
9 three separate designated agencies with one rail transit agency
10 under their oversight, namely WMATA, or they could coordinate
11 their efforts through the establishment of one joint organization.

12 Due to the obvious administrative burdens that it would
13 place both on WMATA and the agencies to have three separate
14 oversight organizations, the choice was made to establish the
15 Tri-State Oversight Committee via a memorandum of understanding in
16 1997. I believe that's entered in as part of our program
17 standard, which I believe is entered in as an exhibit. The basis
18 of the Tri-State Oversight Committee is its promulgation of the
19 requirements and its execution of the state safety oversight
20 requirements under 49 C.F.R. Part 659. The individual
21 jurisdictions, Maryland, D.C., and Virginia each have an
22 individual agency. In Maryland it's the Department of
23 Transportation, the Secretary's office for the Maryland Secretary
24 of Transportation. In Virginia it is the Virginia Department of
25 Rail and Public Transportation, which, for clarification's sake,

1 is a separate agency from VDOT. And in the District of Columbia,
2 as Mr. Madison mentioned, it is the District's Department of
3 Transportation. The agency leadership of each of those individual
4 agencies are responsible for appointing TOC members. There are
5 two TOC members from each jurisdiction. They also have the option
6 of appointing alternate members for support and to provide
7 additional expertise.

8 The TOC originally met on a quarterly basis. It now
9 meets on a monthly basis, with additional meetings as required.
10 The TOC enacts the requirements of 49 C.F.R. Part 659 by
11 establishing a system safety program standard. The program
12 standard is a document which sets out the requirements for WMATA
13 to meet in their System Safety Program Plan as well as their
14 security and emergency preparedness plan. These documents address
15 WMATA's response to hazard management, accident investigation, the
16 formulation of corrective actions related to the safety and
17 security of the system as well as other key areas.

18 In terms of the TOC membership, the TOC also engages the
19 services of a technical support consultant. Joining us behind us
20 is Ken Korach. He's the president of TRA, Transportation Resource
21 Associates. When there are certain areas of technical expertise
22 that individual appointed TOC members may not possess, such as
23 signals or track or vehicle engineering, for example, we have a
24 budget to address consultant support to provide that expertise on
25 an as-needed basis. That is most commonly brought into service

1 during the triennial audit. The triennial audit, as mandated by
2 659, is the TOC's every three years, in-depth evaluation of safety
3 and security at the Metro system.

4 We evaluate all aspects of the rail system safety and
5 security, including maintenance, operation, management practices,
6 and other aspects of it, and we bring in a number of technical
7 experts to perform the on-site portion of that audit. Once that
8 audit is concluded we track the -- we track findings and those
9 technical experts are available to the committee as needed. I
10 hope I didn't answer your question in excessive detail, but that's
11 a basic rundown.

12 MR. KLEJST: No, I do appreciate that very comprehensive
13 answer. You mentioned that there were two representatives from
14 each of three entities, Maryland, Virginia, and the District of
15 Columbia. How long is the term that each of those individuals
16 serve and are they rotated or are they staggered or is everyone
17 replaced at the same time?

18 MR. BASSETT: The terms for which individuals are
19 appointed to the TOC are determined by their individual -- by
20 their home agencies. Speaking from prior experience, it tends to
21 be that someone is appointed to the TOC by their leadership until
22 such time as either they choose to leave of their own volition or
23 their agency reassigns them elsewhere. The chair of the TOC
24 rotates between jurisdictions every year. Presently, from earlier
25 2009 into 2010, the District of Columbia holds the chair, while

1 the Commonwealth of Virginia, whom I represent, holds the vice
2 chair. Then, at an annual transition meeting, the chair
3 transfers, the vice chair takes over the chairmanship position and
4 then the jurisdiction which did not originally have either of
5 those moves into the vice chair. So next month, for example,
6 Maryland will assume the vice chair at the TOC, while Virginia
7 will assume the chair.

8 MR. KLEJST: So one's participation as a member of the
9 Tri-State Oversight Committee could be indefinitely, if that's the
10 desire of the individual entity, either Maryland DOT, Virginia
11 Department of Public -- Railroad and Public Transportation, or the
12 D.C. Department of Transportation?

13 MR. BASSETT: Yes, that determination is made by the
14 individual agencies.

15 MR. KLEJST: Mr. Madison, you had described briefly some
16 of the functions that are performed by the Tri-State Oversight
17 Committee, as well as supplemented by Mr. Bassett. Other than the
18 implementation and monitoring of the System Safety Program Plan,
19 development of the SSP standard, and general oversight from a
20 safety and security standpoint, are there any other requirements
21 or are there any other areas that the Tri-State Oversight
22 Committee is involved in?

23 MR. MADISON: Yes. As I mentioned earlier, we do
24 participate in monthly meetings with WMATA and there are also --
25 we participate in what's called a CAPTURE meeting. This is also a

1 meeting that's in addition to our monthly meeting. It basically
2 focuses on resolution of the corrective action plans. So this is
3 a meeting that is held typically with a member of the TOC and the
4 WMATA safety office, in addition to whatever departments that we
5 may require to be at that particular meeting.

6 So we may have a meeting with the safety office and
7 require that someone from operations attend that meeting and focus
8 on corrective action plans that deal specifically with operations.
9 So that's one other aspect where we participate with WMATA. We
10 also participate in any kind of on-site reviews, any kind of, you
11 know, assessments of the WMATA rail system that we deem necessary.
12 Those are some areas where we also participate.

13 MR. KLEJST: We'll get into the, in greater level of
14 detail, some of the activities that take place during those
15 meetings, but thank you for that. As far as the current members
16 of the Tri-State Oversight Committee, how long have they been in
17 their positions? Perhaps we should start with the District of
18 Columbia first.

19 MR. MADISON: Let's see. I first became involved with
20 the TOC in March of 2009. I can't speak for my other
21 representative, but the other representative who is a D.C.
22 representative has been on for about a year and half. Prior to
23 that, other TOC members had been on for about two years at a time
24 and then they -- because of their other job functions, they had to
25 move on to other responsibilities.

1 MR. KLEJST: And Mr. Bassett, if you could respond from
2 the Virginia -- Commonwealth of Virginia, please.

3 MR. BASSETT: Sure. And if it's okay, I'll give a brief
4 rundown as well on the Maryland folks, because --

5 MR. KLEJST: If you could, please, that would be
6 helpful.

7 MR. BASSETT: -- I used to work on that and none of them
8 are up here. I began working for the Virginia Department of Rail
9 and Public Transportation as a TOC member in March 2009, because
10 that was what I was hired to do as my full-time job. Previously,
11 I was a TOC member for Maryland and I joined the committee
12 originally in 2006, when I started my employment in the late
13 summer of 2006 with Maryland.

14 So as you can see, I've been a member of the committee,
15 just working for two different states over the last three or four
16 years. The other full member of the TOC from Virginia,
17 Eloy Recio. He's been with the TOC, I believe, since late 2007,
18 early 2008. Maryland. The two current Maryland TOC members have
19 been with the TOC since May or June of 2009.

20 MR. KLEJST: And you said both members are from
21 Maryland?

22 MR. BASSETT: Both members from Maryland. I left
23 Maryland in March of 2009 and my other Maryland TOC member, my
24 boss, actually retired from state service about three months
25 later.

1 MR. KLEJST: And are the members that represent the
2 District of Columbia, the Commonwealth of Virginia, and the State
3 of Maryland, are they all employed by their respective nominating
4 agencies, such as Maryland DOT, the District of Columbia's
5 Department of Transportation, and the Virginia Department of
6 Railroad and Public Transportation?

7 MR. BASSETT: They are.

8 MR. KLEJST: Are there any options that may be available
9 in the memorandum of understanding that allows them to be drawn
10 from other sources?

11 MR. BASSETT: I won't speak specifically to the
12 memorandum of understanding. However, I do know that in the past,
13 jurisdictions appointed folks that they determined were qualified,
14 who were from, say, local government. To give an example,
15 Maryland, in the earlier part of, I think, 2000, 2001, appointed a
16 local government fire officer who had detailed knowledge of Metro
17 and emergency response procedures, and even though that individual
18 was not a direct employee of the Secretary's office, they were
19 deemed qualified and their jurisdiction agreed to let them serve
20 on the committee.

21 MR. KLEJST: But the general practice would be to
22 nominate individuals that are from the three nominating agencies,
23 correct?

24 MR. BASSETT: The general practice, yes.

25 MR. KLEJST: Okay. And are there any unique

1 requirements, professional experience, educational experience,
2 that is required by -- either defined in the memorandum of
3 understanding or used as a basis of the operation to determine how
4 an individual is selected to be a member of the Tri-State
5 Oversight Committee?

6 MR. BASSETT: Per the memorandum of understanding, each
7 individual jurisdiction sets qualifications and requirements for
8 the individuals that it appoints to the Tri-State Oversight
9 Committee. We have a broad range of experiences and backgrounds.
10 Some of our folks, career state safety oversight program managers,
11 such as myself, and one of my other members from Virginia have
12 been working in state safety oversight for a while. The other
13 individuals who have been appointed to the TOC, as I mentioned,
14 there is a fire chief who was a member from Maryland.

15 Other jurisdictions, for example, Eric has a
16 transportation planning background. I know that his other D.C.
17 co-member has a background in homeland security. We have a
18 professional engineer who's an alternate member of our committee
19 from Virginia. We also have individuals who have a railroad FRA
20 background. The areas in which we might not have our own
21 firsthand experience in, you know, such as track or signals or
22 vehicle engineering, as I mentioned previously, we rely on the
23 services of our consultant.

24 MR. KLEJST: But there is no requirement defined, per
25 se, that stipulates that there must be -- in order to participate

1 as a member of the Tri-State Oversight Committee, a background in
2 system safety, operations, you can be drawn from any discipline
3 from your respective nominating agencies.

4 MR. BASSETT: There are no written requirements. It's
5 up to the judgment of the individual nominating agencies.

6 MR. KLEJST: So I could either be a transportation
7 planner, I could be someone from the finance department, or I
8 could be someone that has a system safety background from a
9 previous employer. So the range of experience does vary?

10 MR. BASSETT: Yeah, I would just again say it's up to
11 the judgment of the individual agency.

12 MR. KLEJST: Is there a unique title for each of the
13 individual agencies that makes that nomination? For example, in
14 the District of Columbia, what would be the title of the
15 individual that would make the nomination on behalf of the
16 District?

17 MR. MADISON: Well, for the District it would typically
18 be the -- well, for the District it's typically a representative
19 from the Office of Mass Transit and then from the Office of Risk
20 Management. But the associate directors from each of those
21 administrations would make a recommendation to the agency head if
22 one of their staff members were to be selected to be on the TOC.

23 MR. KLEJST: So that was the Office of Mass Transit.
24 And I'm sorry, the other location?

25 MR. MADISON: Office of Risk Management. And the Office

1 of Mass Transit is now the Progressive Transportation Services
2 Administration, but we still have mass transit functions within
3 that office.

4 MR. KLEJST: And from the State of Maryland, do either
5 of you know the name or, I'm sorry, the title of the position that
6 would make that nomination?

7 MR. BASSETT: In my experience, the Secretary of
8 Transportation for the State of Maryland issued me a letter
9 formalizing my appointment to the TOC when I worked for Maryland.
10 However, I can't speak for current practice there, because I'm not
11 an employee. In Virginia, the Director of Rail and Public
12 Transportation, who is my agency director, makes that nomination
13 and I believe that the director does so in consultation with the
14 Virginia Secretary of Transportation.

15 CHAIRMAN SUMWALT: Mr. Bassett, two things. First --

16 MR. BASSETT: The mic.

17 CHAIRMAN SUMWALT: -- pull it right up close to you
18 there, because we want to definitely hear what you've got. Put it
19 right in front of you there.

20 MR. BASSETT: Is that better?

21 CHAIRMAN SUMWALT: That's considerably better. And I
22 would like to request, for the record, that TOC be able to provide
23 with us how the State of Maryland does make this appointment. If
24 you'd take that as an IOU.

25 MR. BASSETT: Certainly.

1 CHAIRMAN SUMWALT: Submit it to Mr. Dobranetski. And
2 what would be a comfortable timeframe for you?

3 MR. BASSETT: I would say within a week. I would say a
4 week from today.

5 CHAIRMAN SUMWALT: That's certainly acceptable. Thank
6 you very much. Again, pull that mic right in front of you and the
7 person you're speaking to is there, so put right in front of you.
8 Thank you.

9 MR. KLEJST: Mr. Madison, you mentioned that you were
10 employed by the District of Columbia. That is your full-time
11 employer?

12 MR. MADISON: Yes, it is.

13 MR. KLEJST: And roughly, what percentage of your time
14 is devoted to Tri-State Oversight Committee activities as opposed
15 to your primary duties within the District of Columbia?

16 MR. MADISON: It actually varies depending on kind of
17 what -- you know, I'm kind of juggling other responsibilities, but
18 I would probably say, prior to June 22nd, I was spending probably
19 about 30 percent of my time dedicated to the TOC. Post-accident,
20 it was more along the lines of probably 80 to 90 percent of my
21 time was spent with TOC-related activities.

22 MR. KLEJST: Okay, thank you. And Mr. Bassett, you
23 mentioned that you were a full-time -- that your full-time
24 responsibilities were that of the Tri-State Oversight Committee?

25 MR. BASSETT: That's correct.

1 MR. KLEJST: And are you aware of the situation with --
2 as far as the percentage of time devoted to TOC activities with
3 the representative from the State of Maryland?

4 MR. BASSETT: I could only speak to when I was an
5 employee there. I would prefer not to speak on their behalf,
6 specific to their exact full-time equivalence or level of effort
7 after I left. Although I'm sure we could request, along with the
8 previously stated request about nomination practices, we could get
9 an estimate of their exacts hours and --

10 MR. KLEJST: If you could, please. Yes, if we could
11 make that request.

12 MR. BASSETT: Certainly, we can obtain that.

13 CHAIRMAN SUMWALT: Yes, that would be appreciated.
14 Thank you.

15 MR. KLEJST: Now, where are the TOC's offices located?

16 MR. BASSETT: The TOC uses the facilities of its member
17 agencies, such as the Department of Rail and Public Transportation
18 or the District Department of Transportation, to conduct meetings
19 and to hold activities. We also meet at WMATA when necessary. We
20 do not have a physical office that is specifically used for the
21 TOC program, given that all three of our jurisdictions have three
22 different agencies with three different agency offices. So there
23 is no specific physical office, but our agencies make facilities,
24 administrative support, meeting space, and anything else we could
25 need, available to us.

1 MR. KLEJST: And the Virginia -- or within the
2 Commonwealth of Virginia, the Railroad and Public Safety Office
3 provides that?

4 MR. BASSETT: The Department of Rail and Public
5 Transportation has, in the past, made meeting space available for
6 the entirety of the TOC when we needed it and they provide my
7 physical office.

8 MR. KLEJST: Now, if I were a concerned citizen and I
9 wanted to reach out to the TOC, how would I go about doing that if
10 the TOC itself does not have an office?

11 MR. BASSETT: I believe about six months ago the
12 District Department of Transportation established a website on
13 their server that details the TOC's state safety oversight
14 efforts. It includes contact information that's up to date for
15 all TOC members. And I do not have the link immediately with me,
16 but I'm more than happy to provide it once I can administratively
17 get it. But that website has contact information for all us.

18 MR. KLEJST: I'll ask the same question from the
19 timeframe of, for example, June 1st of 2009. If I were a
20 concerned citizen that wanted to contact TOC regarding an issue,
21 how would I go about doing that?

22 MR. BASSETT: I could only say that prior to June --
23 prior to the establishment of that website, we did not have a
24 public presence as such.

25 MR. KLEJST: So no telephone number published?

1 MR. BASSETT: None to which I'm aware.

2 MR. KLEJST: No address published?

3 MR. BASSETT: None that I'm aware of, no.

4 MR. KLEJST: Mr. Madison, can you add anything to that
5 answer?

6 MR. MADISON: No, that would be correct.

7 MR. KLEJST: However, subsequent to the June 22nd, 2009
8 accident, apparently something changed. Could you please explain
9 what that something was? Mr. Madison.

10 MR. MADISON: Okay. Basically, what we did after the
11 accident, we did start to receive requests for information, media
12 requests and just general inquiries into who the TOC was, what our
13 role was, what functions we perform. So we provided some space on
14 our website that just gives a brief overview of what the TOC is,
15 including our program standard, a link to 49 C.F.R. Part 659, in
16 addition to some other documents related to TOC activities with
17 WMATA, in addition to links to all of the TOC members, so that if
18 a concerned citizen wants to get in contact with a TOC member,
19 they can scroll down to the bottom of that page; there is a web
20 link, you click on that link and it opens up an e-mail that you
21 can send to one of our members. So since June we have received
22 some e-mail notifications from citizens just asking general
23 questions about our activities.

24 MR. KLEJST: So from the time the TOC was formed in
25 1997, I believe you said --

1 MR. MADISON: Yes.

2 MR. BASSETT: Yes.

3 MR. KLEJST: -- through sometime subsequent to
4 June 22nd, none of that information existed that would facilitate
5 someone being -- someone contacting the Tri-State Oversight
6 Committee about a safety concern or issue?

7 MR. MADISON: Well, I can't speak to my time before
8 2007, since I wasn't on the TOC until that time, but from the time
9 that I was on the TOC until June 22nd, to my knowledge, we didn't
10 have a method in place for the public to contact us until after
11 June 22nd.

12 MR. KLEJST: All right. Now, who does the TOC report
13 to?

14 MR. MADISON: Well, it's kind of, I guess, a two-part
15 answer. Because we are employees of our state agencies, we each
16 report, in our capacity as state employees, to our agency heads.
17 But in terms of, you know, who does the TOC report to, I mean --

18 MR. BASSETT: I would say that Mr. Madison accurately
19 depicted it as individual state or District employees, we report
20 to our supervisors within those individual agencies. The TOC as
21 an organization submits status reports, updates and information to
22 the Federal Transit Administration in compliance with 49 C.F.R.
23 Part 659.

24 MR. KLEJST: Well, everyone needs to report to someone
25 and everyone needs to be accountable to someone, whether it be a

1 chief executive officer to their board of directors or for within
2 a governmental type of a orientation to some individual within a
3 chain of command. So that I understand this correctly, the
4 individual members will report to their respective departments or
5 employers, to try to simplify matters here, and the TOC itself
6 just provides reports of their activities, as required by Part
7 659, to the Federal Transit Administration?

8 MR. BASSETT: That would be accurate.

9 MR. KLEJST: Does the Federal Transit Administration
10 provide any oversight of the Tri-State Oversight Committee?

11 MR. BASSETT: They do. They conduct audits every three
12 years of the Tri-State Oversight Committee, evaluating our
13 compliance with the implementation of 659 as a state safety
14 oversight organization. In turn, we audit WMATA on a three-year
15 schedule to evaluate their implementation of our program standard.
16 But I would characterize the FTA's oversight -- I would
17 characterize the FTA, yes, as having oversight of the TOC.

18 MR. KLEJST: Okay. And as far as the decision-making
19 process within the Tri-State Oversight Committee, you mentioned
20 that there were two individuals from each of the three entities
21 and each of those entities had an alternate?

22 MR. BASSETT: No, each individual jurisdiction has the
23 option of appointing alternate members to provide staff support or
24 additional expertise. However, each jurisdiction has two voting
25 TOC members.

1 MR. KLEJST: Okay. So there's six individuals that meet
2 on a quarterly basis originally and now meet on a monthly basis?
3 Or how does the TOC meet as an individual working group, I believe
4 you referred to, as earlier?

5 MR. BASSETT: The TOC meets in person every month at an
6 office of one of the three jurisdictional agencies or at WMATA, as
7 circumstances require. Sometimes due to, for example, inclement
8 weather, we are forced to move our monthly in-person meetings to a
9 conference call. In addition, as Mr. Madison mentioned,
10 individual TOC members as well -- and I should also mention that
11 the TOC, at all of these meetings, has representatives from our
12 technical support consultant. We also meet with WMATA formally at
13 the TOC monthly meetings.

14 TOC members are present for an internal or, as you might
15 say, an executive session later on in the meeting. It's opened up
16 and we meet with WMATA as well as outside agencies such as FTA,
17 the Transportation Security Administration and on some more recent
18 occasions, actually the NTSB. We have an additional monthly
19 meeting, as I began to mention, which, as Eric mentioned, is
20 called the CAPTURE meeting. CAPTURE stands for Corrective Action
21 Plan Technical Review Entity. These meetings involve TOC members
22 as well as WMATA members, both from the safety department and
23 operating departments, such as track and structures, vehicle
24 engineering, other departments, to review individual corrective
25 action plans of a safety or security nature, to get status

1 updates, to review and revise them as necessary, and to evaluate
2 documentation that's presented as evidence of their having been
3 completed.

4 MR. KLEJST: Mr. Madison, as the current chair of the
5 Tri-State Oversight Committee, what is the process in place to
6 make decisions as far as the TOC's activities, whether they be
7 development -- well, let me break it down into two pieces. Do you
8 develop policy?

9 MR. MADISON: We are basically governed by our program
10 standard, so if we -- and our program standard basically states
11 that in order for us to -- if we have to vote on something, we
12 require a quorum of at least one member from each jurisdiction to
13 have a quorum. So if we need to move something forward, we have
14 to have one member from each jurisdiction present to offer a vote
15 before that action can be taken.

16 MR. BASSETT: I would add, if I may, the formal
17 requirement within the program standard is that, to make a
18 decision, it does require the affirmative vote of one individual
19 -- one member from each jurisdiction. However, as a matter of
20 general practice, decisions tend to get worked out either in
21 person, via conference call or, as is most common for our
22 communication, e-mail, which we're in touch with each other on a
23 daily and occasionally hourly basis. So the presence of formal
24 votes to make decisions is not common. Generally, decisions are
25 worked out and agreed via e-mail or phone or in-person discussion

1 before it comes to a formal vote.

2 MR. KLEJST: And that applies to both policy decisions
3 as well as decisions regarding corrective action items for a
4 particular property, in this case, WMATA?

5 MR. BASSETT: In particular, regarding corrective action
6 plans, the procedure, which began in May of 2009, has generally
7 been to have individual TOC members, one or two of them, meet with
8 WMATA, both the safety department as well as support staff from
9 our consultant as well as members from the WMATA operating
10 departments, to review either new proposed corrective action plans
11 or corrective action plans which have been submitted in the past.

12 Generally, what the TOC members will do after these
13 review processes is bring a summary of their evaluation and
14 present that to the entirety of the committee and make a
15 recommendation either that a corrective action plan be approved,
16 not approved, or in the case that WMATA has stated that the
17 corrective action plan has been fully implemented, that that plan
18 either be closed out, by which we verify that it has been
19 completed, or not closed out, by which we say it has not yet been
20 brought through.

21 MR. KLEJST: And that has been since December of 2009?

22 MR. BASSETT: No, the process which I described for
23 reviewing and taking action upon corrective action plans has been
24 in place since May of 2009.

25 MR. KLEJST: Prior to May of 2009, did the TOC conduct

1 activities, as you just described, for the same issue, the
2 corrective action plan?

3 MR. BASSETT: They generally took place in TOC meetings
4 themselves, so they were -- the discussions occurred part of
5 general business as opposed to a specific focused meeting.

6 MR. KLEJST: And I still haven't heard an answer to the
7 policy question.

8 MR. BASSETT: Oh, I apologize.

9 MR. KLEJST: If there is a need to deal with a policy
10 issue, how is that handled by the Tri-State Oversight Committee?

11 MR. BASSETT: I would say that, generally, when there is
12 an issue of significant policy as it relates to our implementation
13 of 659 through our program standard, that would get discussed in
14 one of our monthly meetings and there would generally be a vote
15 taken on that. So I would amend my previous statement to reflect
16 that. In terms of overall policy as it relates to the very 50,000
17 foot transportation policy, we would rely on our agency directors
18 for consultation on that and that would come from our superiors.

19 MR. KLEJST: I'll follow up on that in just a minute.
20 The decision-making process, though, is this by a majority vote,
21 by a consensus, or how do decisions -- are they made within the
22 Tri-State Oversight Committee?

23 MR. BASSETT: Generally consensus. I think what I
24 should've said earlier is that a vote that is not a unanimous
25 consensus is rare. In fact, I could not recall one of those off

1 the top of my head. Recorded votes, including the affirmative
2 vote of one member from each jurisdiction, would be necessary to
3 take action on an issue of significant policy related to the
4 implementation of our program standard. Does that adequately
5 address your question regarding policy?

6 MR. KLEJST: It sounds as if a majority vote would apply
7 to both the policy as well as corrective items. Either of you
8 gentlemen.

9 MR. BASSETT: Yes. I suppose generally a vote on --
10 when you say policy, it might be more helpful for me to have an
11 example so that I can give you some more specific information, by
12 what you mean when it comes to a policy level vote.

13 MR. KLEJST: Well, the document that you referred to
14 earlier, what we'll refer to as the method in which the TOC
15 conducts their business.

16 MR. BASSETT: Um-hum.

17 MR. KLEJST: If there's a need to change that
18 methodology --

19 MR. BASSETT: Yes.

20 MR. KLEJST: -- how does that take place? Is it by
21 majority vote or is there a requirement for consensus or how does
22 that take place?

23 MR. BASSETT: That would be an update to our system
24 safety program standard. We're required to review that document
25 every year, under 659, to evaluate whether or not it's still

1 sufficient to address the conditions under which we operate under.
2 If we do not find that an update is required, we're required to
3 notify FTA that we will not be updating it. If we do find that an
4 update is required, we're required to submit that to FTA.
5 Revising the program standard requires a majority vote of all TOC
6 members.

7 So in the specific instance you mentioned, TOC members
8 as well as our support staff from our consultant would review,
9 evaluate the program standard, meet to discuss it and then once
10 the group had reached a final draft of the proposed revisions to
11 that document, they would vote on those changes and as a final
12 document. And it would be a working back and forth process up
13 until the final list of proposed changes was made. Upon that list
14 being proposed to at a TOC meeting, the members would give it an
15 up or down vote, those changes would be finalized and the revised
16 program standard would be provided to FTA.

17 MR. KLEJST: So as I've listened to the answers that you
18 provided for both the corrective action and policy issues, it
19 sounds to me that it's a majority vote, and under all
20 circumstances.

21 MR. BASSETT: Yes.

22 MR. KLEJST: And is that specified within the memorandum
23 of understanding that formed the Tri-State Oversight Committee,
24 that that's the methodology for making decisions at the committee
25 level?

1 MR. BASSETT: It's in the program standard, which is the
2 document that guides us on a regular basis. I don't believe
3 it's --

4 MR. KLEJST: Do you have an answer to that question,
5 though, other than directing me to the program standard?

6 MR. BASSETT: Of whether or not it requires a major
7 vote --

8 MR. KLEJST: Yes.

9 MR. BASSETT: -- to take any action?

10 MR. KLEJST: Yes.

11 MR. BASSETT: I would have to get back to you. I'd need
12 to take a quick look at it. The reason that it would require me
13 to do that is because, as a general practice, we take few formal
14 votes. It is a working organization and we rely much more on
15 internal discussions and analysis rather than a voting process
16 that might be more familiar to, say, a board of directors.

17 MR. KLEJST: Well, what I'm trying to establish is that
18 if there's a need to make a policy change or if there's a need to
19 thoroughly discuss a given corrective action that's on -- you
20 know, it's under consideration by the Tri-State Oversight
21 Committee, what I'm trying to identify as clearly as I can, what
22 that process is. Now, you did mention that there was an effort to
23 try to reach consensus, and from an organizational efficiency
24 standpoint, that clearly is the most effective way to make a
25 decision, is by consensus so that everyone can support that. But

1 if I were a member of the -- the representative from Maryland and
2 my counterpart was unable to make it to a vote and both the two
3 Virginia representatives were there and two individuals from the
4 District of Columbia were there and I were to try to influence to
5 the greatest extent that I could the outcome of a vote, if the
6 other two members were completely in disagreement with me, it
7 sounds as if that the final decision would be -- it could very
8 well have adverse impacts to one of the entities. Could that
9 situation develop?

10 MR. BASSETT: Just so that I understand, the situation
11 you described is one in which one member of one jurisdiction was
12 the only person who was present and yet was simply outnumbered by
13 the members from other jurisdictions.

14 MR. KLEJST: That is correct.

15 MR. BASSETT: That's correct. I believe it's Section 2
16 of our MOU that established us, states that the affirmative vote
17 of a majority of the TOC shall be necessary to take any official
18 action, by which official I interpret to mean matters of policy
19 such as those that you outlined. So the situation that you
20 described in which only one member is able to be present for a
21 meeting from one jurisdiction and has a difference of opinion of
22 the others, technically, all three jurisdictions being present
23 would constitute a quorum and if that individual was not in the
24 majority, then action would proceed.

25 MR. KLEJST: Is there an -- oh, I'm sorry.

1 MR. BASSETT: That's the end of my sentence.

2 MR. KLEJST: Is there an appeal process, so that if a
3 situation did develop, for example, if there was one
4 representative from the District of Columbia dealing with an issue
5 that would require, say, the implementation of a safety standard
6 and the two Virginia representatives were present and the two
7 Maryland representatives were present and there was a disagreement
8 amongst the parties, in essence, is there any appeal process that
9 the District of Columbia would have under those circumstances to
10 appeal that decision that may adversely impact the riders from
11 their -- in the District of Columbia?

12 MR. BASSETT: I'm not immediately aware of an appeal
13 process within the framework of the TOC MOU or program standard
14 itself. In my experience going back to 2006, I have not
15 encountered a situation in which a disagreement was so significant
16 among the jurisdictions that they -- that a situation like that
17 might've arisen. I believe that in the circumstances you're
18 describing, as a matter both of general practice and of
19 acknowledgment of the fact that we work for state agencies, such a
20 disagreement would be elevated to the level of our policy
21 leadership. In the example you gave, were Mr. Madison to disagree
22 with a step proposed by myself and Ms. Bridges from Maryland and
23 he had been outvoted, as you mentioned, I do not believe that vote
24 would go forward. I would believe that the matter would instead
25 be elevated to his policy leader, the Director of the District of

1 Columbia DOT.

2 MR. KLEJST: Would that also apply to a situation where
3 you had three members present or six and there was a tie vote? Is
4 there a mechanism to resolve that or would that also get elevated
5 to your respective -- the individuals that you report to?

6 MR. BASSETT: I think it would be safe to say that, in
7 general practice, disagreements of policy would not be decided on
8 the basis of a TOC vote but would rather be worked out by our
9 leadership.

10 MR. KLEJST: Following up on some earlier questions with
11 respect to influence, can you make decisions independently or do
12 you have to consult with your respective districts or entities to
13 get guidance as to how you should vote as a TOC member?

14 MR. BASSETT: Matters of the implementation of our
15 program standard, of evaluation of WMATA's safety and security
16 practices, and of the general day-to-day conduct of our oversight
17 program, we have what I would consider to be appropriate latitude
18 to make decisions on our own. Matters of significant policy, such
19 as revising the memorandum of understanding which establishes us,
20 which the three the jurisdictions recently did, would need to go
21 up to our leadership.

22 MR. KLEJST: Changes in the program standard document,
23 would that require direction from your leadership or would that be
24 done by the TOC members under your authority, Mr. Madison?

25 MR. MADISON: If we have to make any changes to our

1 program standard, my experience has been that we've done at the
2 TOC level. We would not have to elevate it up to our agency
3 leaders.

4 MR. BASSETT: That's been my experience as well.

5 MR. KLEJST: At the TOC level?

6 MR. MADISON: Yes.

7 MR. BASSETT: At the TOC level, yes.

8 MR. KLEJST: So to conduct to day-to-day oversight
9 activities, you don't need to consult with your superiors in order
10 to get guidance and direction as to how you make your decisions as
11 TOC members, Mr. Madison?

12 MR. BASSETT: Not regularly, no.

13 MR. MADISON: No, not regularly.

14 MR. KLEJST: Mr. Bassett? The same question,
15 Mr. Bassett.

16 MR. BASSETT: I'm sorry, I cross-talked. Not regularly,
17 no.

18 MR. KLEJST: Other than the requirements under Part 659,
19 does the Tri-State Oversight Committee have any other requirements
20 or regulations in effect that, in this case, WMATA would need to
21 adhere to?

22 MR. BASSETT: The Tri-State Oversight Committee was
23 expressly created for the purpose of implementing 49 C.F.R.
24 Part 659. As such, our memorandum of understanding that
25 established us originally did not give us authority beyond that to

1 implement additional regulations upon WMATA. In the
2 implementation of our system safety program standard, we have
3 limited authority to request some additional information from
4 WMATA, but not significantly beyond 659. In the recent revision
5 of our memorandum of understanding, I believe -- if you'll pardon
6 me one moment while I get the revised version of it out. I'm
7 sorry, if you'll pardon me one moment while I get the revised
8 version out.

9 MR. KLEJST: Yes, please, please do get the document.

10 MR. BASSETT: While we're finding the document, and I
11 apologize for the delay, the most recent revision to the
12 memorandum of understanding, which I believe was promulgated late
13 last year, included a provision, which we'll locate momentarily,
14 which would permit the TOC, under the authority of the three --
15 thank you -- under the authority of the three jurisdictions, the
16 amendment to the MOU, which is dated December 5th, 2008, included
17 the -- included a statement permitting the TOC, under the
18 authority of the three policy leaders of the Maryland, D.C., and
19 Virginia, to adopt or establish policies, procedures or standards
20 governing the safety and security of the Metrorail operation.

21 MR. KLEJST: How would you define that?

22 MR. BASSETT: As such, we've continued -- we've not
23 promulgated additional regulations or requirements as stated in
24 that section. However, we have focused our program around the
25 implementation of 659, and while we're certainly open to

1 considering additional regulations, we have not done so at this
2 time.

3 MR. KLEJST: Thank you. And does the TOC have the
4 ability to assess civil penalties, fines or any type of -- do you
5 have any enforcement capabilities if, in this case, a rail transit
6 agency were to be unable, unwilling to implement a corrective
7 action that you determine from an audit or an inspection?

8 MR. BASSETT: Much like most other state safety
9 oversight organizations nationally, the only authority that TOC
10 has is derived from 49 C.F.R. Part 659. Under 659, if the Federal
11 Transit Administration makes the determination that a state, not
12 the individual transit agency but a state, has not appropriately
13 implemented 659, the FTA has the authority to withhold five
14 percent of federal grant funding to that state, grant funding
15 regarding rail transit.

16 The TOC is not structured like a public utilities
17 commission with independent regulatory authority at the state
18 level. The only authority that the TOC currently possesses by
19 regulation is 659, and under 659 we are not afforded the
20 opportunity of our own to assess fines, civil penalties, or
21 mandated operating practices.

22 MR. KLEJST: So if they're found to be in noncompliance
23 with their System Safety Program Plan or any other corrective
24 action item that you may have developed, is there anything that
25 you can do other than keeping it is an open corrective action

1 item? I'll direct this to Mr. Madison as the current chair.

2 MR. MADISON: Typically, if we have any, I guess,
3 outstanding issues with WMATA that we feel, you know, are severe
4 enough, we can elevate them up to our policy folks if we feel the
5 need to who could then, I guess, intervene with the WMATA board,
6 and that is something that we keep open as an option.

7 MR. KLEJST: Do you know if that's ever happened?

8 MR. MADISON: In my time on the TOC, at least in the
9 time that I've been on, it has not. But since the accident, our
10 agency -- I know that, on my end, my agency director has taken
11 much more of an interest in a lot of the activities that go along
12 with the TOC. So I know like when we had our issue with the
13 Roadway Worker Protection Program, that was something that he
14 wanted to be kept abreast of. I didn't have to -- he wasn't
15 giving me advice or anything, but it was something that he did
16 want to be kind of kept abreast of, as to our progress on that
17 issue.

18 MR. KLEJST: And Mr. Madison, other than the triennial
19 audits that are required under Part 659, are there any other
20 audits, inspections, assessments, evaluations that the Tri-State
21 Oversight Committee is involved in at WMATA's Metrorail operation?

22 MR. MADISON: Yes. You know, in addition to ensuring
23 conformance with WMATA's SSPP and SEPP, we also perform -- you
24 know, we require any reporting of any accidents and incidents in
25 addition to the triennial review and any specialized audits. We

1 also track any issues through the hazard identification process
2 along with our internal safety and security reviews of the agency.

3 MR. KLEJST: And what do you do with that information
4 once you perform your assessment, inspection, what have you? What
5 do you with that information? Who gets it?

6 MR. MADISON: Typically, once it's compiled into a
7 report, we generally share it with the WMATA people. And you
8 know, lately we've also been just kind of keeping our agency folks
9 in the loop as to any reports or anything that may come down, just
10 so that they're aware of what's going on.

11 MR. KLEJST: And who is your primary contact at WMATA,
12 as far as the interaction between the Tri-State Oversight
13 Committee and WMATA itself?

14 MR. MADISON: Our permanent contact is with the WMATA
15 safety office. So we mainly interact with different staff people
16 within that office, as well as the other chief safety officer.

17 MR. KLEJST: So it's not limited to the chief safety
18 officer. It could be anyone appropriate within the safety
19 department?

20 MR. MADISON: Yes, that's correct.

21 MR. KLEJST: And since the TOC is only responsible for
22 the implementation of Part 659, that you are only involved in
23 Metrorail's operation, not Metrobus or commuter rail or any other
24 bus operation within the Washington metropolitan area?

25 MR. MADISON: No, we're not.

1 MR. KLEJST: Okay. Now, do you share any of the
2 Tri-State -- I'm sorry -- the triennial audit results with any
3 other entity other than WMATA? And I'll deal with the issue that
4 you keep your superiors informed. But other than WMATA and the
5 CSO, chief safety officer, being the contact, is there any other
6 group that you share this information with?

7 MR. BASSETT: Yeah. Excuse me. We do. We share that
8 with FTA as a matter of our annual reports to the Federal Transit
9 Administration. Every triennial audit during the year in which we
10 complete it must be submitted to FTA as part of our annual report.
11 And if I could just amend something that I said, there was a
12 misprint on the document that I was reading from, that said
13 December 2008. It was, in fact, December 2009 when the amendment
14 that I mentioned was put into place.

15 MR. KLEJST: So that did not exist prior to June 22nd?

16 MR. BASSETT: Yes, it did not exist prior to June 22nd.
17 I apologize for the oversight.

18 MR. KLEJST: Now if we could move a moment to the
19 general corrective action process, and I'm not going to ask you
20 specific questions about specific corrective actions, but I want
21 to categorize them into some different areas. There are a few
22 items that are still left open from the 2004 triennial audit.
23 There are some open items left over in the -- held in the open
24 category from the wheel rail interface project started in 2006,
25 the maintenance of way peer review, corrective action in 2006.

1 There were two of those items. Eleven from the Woodley Park peer
2 review and two from the Rosslyn incident in 2005. What is your
3 process for monitoring the progress that WMATA would make as far
4 as making the appropriate or taking the appropriate initiatives,
5 taking action to bring these matters to closure?

6 MR. BASSETT: If you would like, I could give you a
7 rundown on the current process and then step back into practices
8 that were in place prior to the accident and further back, if
9 that's acceptable.

10 MR. KLEJST: So it is kept in an open status and there's
11 really no motivation to have the agency take action at present?

12 MR. BASSETT: No, no, that wasn't what I said. I was
13 just -- the process as it currently stands today, February 24th,
14 is such that we meet with WMATA personnel on a monthly basis to
15 discuss and review and evaluate these open action items, including
16 the ones that you mentioned, such as from the Woodley Park peer
17 review, the wheel rail interface study, et cetera. That practice
18 was in place in May of 2009. Before that, generally what happened
19 was that we would transmit requests for updates electronically.
20 If you're asking whether we have an ability to cite or otherwise
21 penalize WMATA for either not providing us the information that we
22 had requested, or not taking action on these corrective action
23 plans on a timeline that we would prefer, we do not have any
24 regulatory ability to sanction them.

25 MR. KLEJST: And I just have two final questions for the

1 TOC. When the change in reporting relationships occurred within
2 WMATA's structure, from the chief safety officer at Metrorail
3 reporting to the general manager, being transferred to a reporting
4 relationship under the chief administrative officer, is that an
5 item that would be addressed by the Tri-State Oversight Committee?

6 MR. BASSETT: It was.

7 MR. KLEJST: Okay. And what was the outcome of that
8 action?

9 MR. BASSETT: On October 10th, 2008, we sent a letter
10 addressed to the WMATA general manager, expressing our concern
11 that the removal of the chief safety officer from a direct report
12 position was a potential concern on our part. I would quote that
13 we said, "TOC asks that you reconsider -- that you consider
14 reestablishing a direct report from safety." This letter that we
15 sent was responded to, I believe, seven days later by the general
16 manager, who indicated that he had reviewed our letter and that he
17 would continue with the course of action of reorganization, as
18 previously stated.

19 MR. KLEJST: Okay. And my final question would be, at
20 one time the quality assurance and the safety function under
21 WMATA's Metrorail reported to -- I believe the title was assistant
22 general manager of safety, security and QA/QC, which was an
23 independent function from an operating department. That since has
24 changed so that the quality assurance department now reports to
25 the managing director of Rail Delivery Services. Is that an area

1 that you would be concerned that the function that should be
2 providing internal oversight reports to the same department that
3 provides that service?

4 MR. BASSETT: The original function to which they
5 reported, I believe, was the assistant general manager for Safety,
6 Security and Emergency Management. The migration of the QA
7 function out of the out of the safety department and into the
8 Operating Department was noted in our review of WMATA's right-of-
9 way protection policies that was issued in December 2009. And in
10 discussions with the Federal Transit Administration, who conducted
11 an audit both of WMATA and TOC during that time period, they also
12 indicated that they were concerned about the flow of information,
13 not necessarily where QA fell on the organizational boxes but
14 simply that the information that QA was collecting was making its
15 way to the safety function for analysis.

16 We transmitted a letter in January of this year, asking
17 that WMATA begin to submit monthly summaries of the safety data
18 collected not only by the QA department, safety related data
19 collected not only by QA, but also by their rail supervision, to
20 the safety office and then subsequently to TOC. And while the
21 date for which that is due has not yet arrived, I've had
22 discussions with WMATA and they've indicated that they will be
23 sharing that information now with the safety department and that
24 information will be making its way to us as well. So I believe
25 that -- in summary, I believe that it was concerning. However,

1 our primary concern was not based on which function it was under,
2 so much as whether the information it was collecting was able to
3 be evaluated by the safety department, and we believe that based
4 on the new information flow that we've worked with WMATA on
5 developing, that that issue will be addressed.

6 MR. KLEJST: Thank you, you've addressed my concern.

7 Mr. Chairman, I've concluded my questions.

8 CHAIRMAN SUMWALT: Thank you.

9 And follow-up from the Tech Panel. Continue questions.
10 Thank you.

11 MR. WATSON: Yes. Mr. Madison, does TOC involve itself
12 with any other agency besides WMATA?

13 MR. MADISON: No, we are established specifically to
14 oversee WMATA.

15 MR. WATSON: Thank you. And we heard, yesterday, that
16 the General Services Administration was to appoint the federal
17 representative on the TOC committee. Has anyone from GSA had
18 discussions with any of the TOC members or with you, regarding
19 what would be needful in making that kind of an appointment?

20 MR. MADISON: We have not been contacted by the GSA.
21 However, we --

22 MR. BASSETT: Mr. Watson, if I could clarify, I believe
23 the committee that was referenced yesterday was the Metro board of
24 directors, which the General Services Administration will be
25 appointing federal representatives to. There was a reference made

1 to the TOC, but I believe that reference was made in error. We
2 are not involved with the board of directors, in terms of
3 participation on that committee. And there, to my knowledge, has
4 been no discussion of the federal government appointing members to
5 the TOC, either. I believe this was a mix-up between two separate
6 committees.

7 MR. WATSON: All right, thank you. I do know that I had
8 a representative from TOC on the working committee for the
9 investigation of the Fort Totten accident and he was a contractor,
10 which implies some kind of a budget. Where does TOC get its
11 operating budget?

12 MR. BASSETT: Each individual jurisdiction contributes
13 \$150,000 a year as a baseline to the TOC program for consultant
14 support. In the past, we've exceeded that and we have been
15 granted additional funding, when necessary, to cover our operating
16 costs.

17 MR. WATSON: And it comes exclusively from the three
18 jurisdictions, nothing from the outside?

19 MR. BASSETT: Only from Maryland, the District of
20 Columbia, and the Commonwealth of Virginia.

21 MR. WATSON: All right, thank you. And Mr. Madison, how
22 is the chairmanship determined? How do you get to be the chairman
23 as opposed to one of the other TOC members?

24 MR. MADISON: How we become the chairmanship is laid out
25 in our program standard. So basically the chair rotates every

1 year between the three jurisdictions, as we said, and how we are
2 selected is, at least for my term, at the time I was -- had been
3 on the TOC and by the time it came around, our other TOC member
4 had not been on the committee long enough, so the chair fell to
5 me.

6 MR. WATSON: So there are some standards?

7 MR. MADISON: Yes.

8 MR. WATSON: There are some requirements of what you
9 have to do in order to be qualified to be the chairman?

10 MR. MADISON: Yes.

11 MR. WATSON: Is there a vice chair?

12 MR. MADISON: Yes.

13 MR. WATSON: And in the event a corrective action plan
14 is developed, what is the process for actually settling for
15 agreeing? Is it a simple vote from the committee on whether or
16 not to accept or approve an item on a corrective action plan?

17 MR. BASSETT: If you'd be amenable, I can address that.

18 MR. WATSON: Sure.

19 MR. BASSETT: Corrective action plans under 659 must be
20 developed by the transit agency to respond to accident findings,
21 the determinations of an audit, or in some circumstances, as
22 outlined under 49 C.F.R. Part -- I believe it's 37 echo, or 37(e),
23 in response to the recommendations from an NTSB investigation.
24 WMATA's responsibility is to evaluate the identified finding or
25 deficiency, develop a plan to correct that and submit that plan to

1 the Tri-State Oversight Committee. At that point the TOC would
2 take a -- would vote either on that issue or on a broader set of
3 corrective action plans on whether or not we wanted to approve
4 that particular course of action. WMATA would then be
5 responsible, upon approval, for implementing that action and
6 providing the TOC with regular updates and information about the
7 progress of that identified CAP.

8 Upon the completion of the action they had identified,
9 they would be required to submit verification to the TOC that they
10 had in fact done what they said they were going to do, and then
11 that is when the TOC would also vote on whether or not we
12 concurred with their verification that the action had been
13 completed. And upon an affirmative vote of that nature, we would
14 "close it out."

15 MR. WATSON: All right, thank you both. And that's all
16 that I have.

17 CHAIRMAN SUMWALT: Okay, Mr. Payan.

18 MR. PAYAN: Thank you, Mr. Chairman. I'd like to go
19 back and you heard testimony yesterday about the three previous
20 incidents, the ATC incidents, and I'd like to go and get TOC's
21 involvement in that, and I'll start with the 2005 Rosslyn near
22 miss. Are you familiar with that incident?

23 MR. MADISON: Yes.

24 MR. PAYAN: Okay. Can you tell us, when was TOC first
25 notified of that incident?

1 MR. MADISON: Just a second. Let's see.

2 MR. BASSETT: I would just add, if I could, that neither
3 of us worked for TOC in 2005, so we will be answering with that,
4 regarding that incident.

5 MR. MADISON: For the Rosslyn incident, the incident
6 actually did not meet the criteria for notification and so it was
7 not reported to the TOC within the typical two hours. The TOC
8 first discussed this incident with WMATA at their July 14th, 2005
9 SSO meeting.

10 MR. PAYAN: Okay. And at that time, did TOC get
11 involved?

12 MR. MADISON: Yes, we did. For that, what we did was --
13 basically, at TOC's direction, the consultant prepared an incident
14 report that was based on the information obtained from WMATA.
15 That was on November 17th of 2005. On March 1st of 2006, WMATA
16 provided a final incident report that contained six
17 recommendations, but corrective actions to address the
18 recommendations were not presented to the TOC. Then finally, on
19 January 18th, the TOC did approve WMATA's June 21st, 2006
20 investigation oversight record and a final investigation report.
21 And as of December 8th of 2009, the CAPTURE meeting was held,
22 which WMATA did provide TOC with evidence of the corrective
23 actions taken for four of the six recommendations and the
24 remaining two have no formal caps proposed at this time.

25 MR. PAYAN: Okay, that was a lot of information.

1 MR. MADISON: Yeah.

2 MR. PAYAN: So my understanding is that the
3 investigation was delegated to WMATA.

4 MR. MADISON: Yes.

5 MR. PAYAN: And your consultant reviewed their report?

6 MR. MADISON: Yes.

7 MR. PAYAN: And then they prepared a report for TOC?

8 MR. MADISON: Yes, they did.

9 MR. PAYAN: Okay. And was there any action or any
10 concern taken from the recommendations they proposed?

11 MR. BASSETT: The recommendations -- I would first add
12 that under our system safety program standard, WMATA is
13 responsible for the reporting on an immediate basis of hazards
14 which, through its hazard management program, are identified as
15 potentially catastrophic. So I can't speak for the determination
16 that was made about the 2005 incident, however, I know that it was
17 brought up about a month later at our next meeting.

18 What I would say regarding the recommendations is that
19 the recommendations stemmed from an internal WMATA report that
20 evaluated the Rosslyn tunnel loss of train detection incident and
21 that report, while it was given to TOC, the recommendations,
22 something phrased such as WMATA should do X, or phrased from the
23 internal committee developing the report, to the rest of the
24 authority. Therefore, the TOC was never given a corrective action
25 plan regarding something to the effect of the authority will, in

1 response to such and such recommendations, take such and such an
2 identified action. Therefore those corrective actions and
3 evidence, now, the authority, to our information, did in fact
4 implement a number of those -- a number of corrective actions in
5 response to those recommendations. However, our corrective action
6 plan tracking matrix did not indicate those until information was
7 provided last year to update us on that.

8 MR. PAYAN: Okay, thank you. Switching to the 2009
9 Potomac Avenue Station overrun, WMATA says or informed us that
10 that's still an open investigation. Can you talk about that
11 incident? Are you familiar with it?

12 MR. MADISON: Yes, yes, we are.

13 MR. PAYAN: When was notification first issued to TOC?

14 MR. MADISON: We were actually notified on March 13th at
15 our monthly TOC meeting.

16 MR. PAYAN: And did TOC become involved at that time?

17 MR. MADISON: Yes, we did. What we did, on April 29th
18 we provided a letter to WMATA requesting an investigation of the
19 incident. On November 16th TOC also provided a letter to WMATA
20 reiterating the request of the previous letter and posing some
21 specific questions. Then, on November 20th WMATA provided TOC
22 with an interim investigation report and on December 18th of 2009
23 the TOC provided comments on WMATA's November 20th interim
24 investigation report.

25 MR. PAYAN: Okay. Has TOC participated in any of the

1 actions to address what has been found so far?

2 MR. BASSETT: My understanding of the Potomac -- of our
3 response to the Potomac Avenue hazardous condition was such that
4 WMATA notified us at this meeting and we had -- I personally had
5 verbal communication with WMATA personnel who were giving me
6 updates on the investigation as it proceeded. Our requests in
7 writing were for written documentation and an interim report. So
8 we were aware as soon as we were notified that WMATA had
9 undertaken a comprehensive investigation of this.

10 The information we were provided appeared satisfactory
11 at the time, as it was not technically reportable under our
12 incident reporting guidelines, only under hazardous condition
13 reporting guidelines, which, again, we rely on their
14 determinations of hazard potential. So to the best of my
15 knowledge at this time, the investigation is continuing and we
16 have an interim report which they provided us in September.

17 MR. PAYAN: That was my next question. There's going to
18 be a final report prepared?

19 MR. BASSETT: Yes, it's my understanding that they're
20 still laboratory testing, ongoing, on some of the components
21 involved.

22 MR. PAYAN: Okay, thank you. And finally the Fort
23 Totten. When was TOC notified of that collision?

24 MR. BASSETT: I was personally notified by
25 Rowan Edwards, who was the rail safety manager for WMATA at the

1 time, about 30 minutes after the initial accident. That was using
2 4:58 as the approximate accident time. I received notification
3 between 5:25 and 5:30. I was on scene at the incident site before
4 6:30 p.m. and TOC members were there, including members from
5 Maryland, D.C., and Virginia, including Mr. Madison, myself, as
6 well as a number of others, were on scene for most of the night,
7 into the morning. And we, as some of you have mentioned already,
8 participated in a number of the NTSB's groups investigating that
9 incident.

10 MR. PAYAN: And how much has TOC been involved with
11 discussions between Alstom and WMATA while they're dealing with
12 these parasitic oscillations?

13 MR. BASSETT: A member of our technical support
14 consultant was a part of the -- participated in some of the
15 signals group's activity. Dan Hawber (ph.).

16 MR. PAYAN: Dan Hawber?

17 MR. BASSETT: Yeah. He was provided status reports and
18 updates from the group on their progress in attempting to
19 troubleshoot the error. I was not aware of the -- from his
20 updates or from any other source, I was not aware of the
21 discussions that were mentioned earlier in the hearing today.

22 MR. PAYAN: That was the level of detail I was
23 wondering. There's been discussions by WMATA and Alstom regarding
24 this and I was wondering, is TOC cut into those discussions?

25 MR. BASSETT: The specific discussions referenced this

1 morning, I have no evidence that we have been a participant with
2 them.

3 MR. PAYAN: My last question. And I asked this it of
4 the panel yesterday. Has TOC identified a common element between
5 these three occurrences?

6 MR. BASSETT: Given that two out of the three of them
7 are still classified as open investigations, I would withhold
8 significant judgment on common elements, as the determination of
9 probable cause for the majority of them is still pending.
10 However, I would concur with Mr. Hielmann's assessment earlier
11 today, in that the generic automated train protection system
12 experienced single-point failures or did not failsafe as these
13 components were intended to do, and therefore I would say that
14 that would be a commonality. However, I would consider that to
15 be, from a technical perspective, a broad commonality.

16 MR. PAYAN: Thank you. That's all I have, Mr. Chairman.

17 CHAIRMAN SUMWALT: Thank you very much, Mr. Payan.

18 And Mr. Gura, I understand you have a few questions.

19 MR. GURA: Yes, sir, I do. You mentioned the technical
20 support that's supplied by the contractor. What all subject
21 matter does a consultant supply for -- I heard the signal and
22 early on you mentioned track and Mr. Watson just said mechanical.
23 What else all does you hire them out to do?

24 MR. BASSETT: We have consultant personnel -- I'm just
25 going to start going down in terms of the folks I work with.

1 Operating practices and human performance, we have one individual
2 who specializes in that. Signals and train control, there's
3 another one who's available. There is a vehicle and railcar
4 engineer who works with us as part of this. There are a number of
5 -- at least two I can think of and I think additional professional
6 engineers who are -- whose expertise is specific to rail transit
7 safety.

8 I'm simply thinking off the top of my head. I know they
9 also use subcontractors for major tasks such as comprehensive
10 audits and there are -- they also have folks who are specific
11 track and structures experts. I'm trying to think of additional
12 programs, but that's the best I could do off the top of my head.
13 But it has been my experience that they have comprehensive
14 technical capabilities in all of the aspects of rail transit
15 safety that are necessary for the implementation of 659.

16 MR. GURA: Okay. Now these consultants, are they
17 individual consultants? Are they under an umbrella of a large
18 corporation that supplies TOC with the consultants?

19 MR. BASSETT: It's a fairly small company and the vast
20 majority of them all work for that one company. It's called
21 Transportation Resources Associates and it's based in
22 Philadelphia.

23 MR. GURA: Okay. And then I guess my next question was,
24 Do you know if the consultants have been vetted to the reasoning
25 that they don't work for WMATA, also, in certain consulting

1 functions?

2 MR. BASSETT: I know for a fact that they perform no
3 work for WMATA and I know that they do work both for state safety
4 oversight organizations nationally and also for rail transit
5 agencies, but I know that they don't perform work for a rail
6 transit agency when they also perform work for the oversight
7 agency or vice versa, if you take my meaning.

8 MR. GURA: Yes, I do. Prior to voting on a corrective
9 action, do you have the consultant go out to verify that the
10 proper remediation had been done or do you just vote at what
11 paperwork has been supplied to you based on that?

12 MR. BASSETT: In some cases we have gone out and done
13 some field verification. However, the vast majority of the time
14 our assessment of whether or not a corrective action has been
15 implemented is based upon evidence submitted to us by WMATA. I
16 think that the Federal Transit Administration asked us a similar
17 question during an audit in December and it's been our experience
18 that the vast majority of these corrective action plans, the
19 verification we need can easily be provided in written format.

20 MR. GURA: Okay. Other than the triennial audits and
21 accident investigations, do you have -- does TOC have a schedule
22 for oversight so there's like an oversight presence with these
23 contractors, like you'll contract for the track guy to go out and
24 review records and then do a track inspection to verify that the
25 track looks like what they say in their inspection reports?

1 MR. BASSETT: We have a regularly scheduled triennial
2 audit that happens every three years. That is a top-to-bottom
3 evaluation of WMATA that would include the types of elements that
4 you mentioned. In terms of a regular oversight presence, as you
5 mentioned earlier in your statement, we have both TOC members,
6 such as myself, and consultants who are on the property at Metro
7 on what I would characterize as a weekly basis performing various
8 oversight functions, some of which are administrative and some of
9 which occur in the field.

10 However, I would point to the best example of our
11 oversight presence as identifying, through our triennial safety
12 and security audit, a deficiency, noting it, evaluating WMATA's
13 response and going out to field-verify the effectiveness of that
14 response. My example would be WMATA's right-of-way worker
15 protection program, which was mentioned yesterday during
16 testimony.

17 After the Eisenhower Avenue incident occurred, in which
18 two track workers were fatally struck and killed, were fatally
19 struck, the -- our triennial audit came in in 2007 and TOC members
20 as well as consultants evaluated the effectiveness of the rule
21 that WMATA had put in place to protect its track workers, which at
22 the time was called 0702. What we found was that 0702 was written
23 in such a manner as to make it difficult for WMATA's frontline
24 employees to implement and we issued findings within our 2007
25 triennial audit report that WMATA consider revising 0702 to make

1 it more effective. WMATA took that recommendation, revised 0702
2 and implemented Special Order 0706. 0706 was an alternate version
3 of 0702 which they felt would improve the protection for their
4 workers.

5 Now, our next triennial audit would not be scheduled
6 until this year, until 2010. However, we felt that, at the
7 beginning of 2009, this was a critical issue and therefore, given
8 that WMATA had about a year to put Special Order 0706 into place,
9 we conducted a special safety review simply focused upon right-of-
10 way worker protection and went out and did field verification as
11 well as administrative document review, personnel interviews, and
12 that kind of thing.

13 So I would hope that that example gives you -- while we
14 do not have a standard schedule for, you know, once a month a TOC
15 member or a contractor inspects track or evaluates the -- you
16 know, whether or not train operators are complying with speed --
17 something like that. That's not a good example. But we do use
18 the triennial audit process as a way of establishing focus for our
19 oversight activities on a three-year basis. And when we identify
20 an area that is in need of additional inspection and evaluation,
21 we take action.

22 MR. GURA: Okay. And the same consultant is used for
23 all three locations? When you said the budget money --

24 MR. BASSETT: I see what you're saying. The three
25 jurisdictions contribute their annual funding and the Metropolitan

1 Washington Council of Governments serves as our administrative
2 agent. The Council of Governments essentially holds the money and
3 uses it to pay the bills of the consultant who provides work and
4 support and effort for the TOC as a whole, members from all three
5 jurisdictions.

6 MR. GURA: When the three parts of the budget is
7 exhausted, do all three contribute again or does -- if the
8 exhaustion is, let's say, happening in D.C., is it relied upon
9 D.C. to supply the shortfall?

10 MR. BASSETT: It's very difficult to identify -- in a
11 three-state program that's dealing with one specific transit
12 agency, it's very difficult to identify exactly where the "drain"
13 is coming from. So in the instances where there's additional
14 funding needed, that's a policy issue that the leaders of the
15 three jurisdictions work out among themselves. So I couldn't
16 speak to how that decision gets made, of who picks up the tab.

17 MR. GURA: Okay. Well, then this would be my last
18 question, then. Since you don't know who picks up the tab, have
19 you ever come across in your short time here where you did not
20 have enough funding to have the contractor come out and do what
21 you thought was necessary?

22 MR. BASSETT: I have never found myself, in my
23 experience with the TOC, in a position where lack of available
24 resources has hampered our ability to do our jobs from a financial
25 perspective.

1 MR. GURA: That's all the questions I have,
2 Mr. Chairman.

3 CHAIRMAN SUMWALT: Thank you, Mr. Gura.

4 I understand there are no further questions from the
5 Technical Panel, so now we're going to go to the parties. And
6 TOC, you have witnesses here, so I'm going to give you the choice.
7 Would you like to go first or last?

8 UNIDENTIFIED SPEAKER: We have no questions, thank you.

9 CHAIRMAN SUMWALT: Thank you. WMATA?

10 CHIEF TABORN: Yes, Mr. Chairman, we have two questions
11 and the questions are to Mr. Bassett. Earlier you indicated, in
12 response to a question, that if there were conflicts with WMATA's
13 implementation of 659, that you would go to your respective state
14 governmental leaders to seek resolution. Would you not also go to
15 the Federal Transit Administration to share with them your initial
16 concerns?

17 MR. BASSETT: Yes. And thank you, chief. There are
18 multiple instances where we have had concerns. I wouldn't
19 necessarily characterize them as conflicts with WMATA, but issues
20 in our oversight with WMATA, where we have apprised the FTA. For
21 example, the letters that I mentioned earlier about the reporting
22 relationship between the chief safety officer and the general
23 manager were cc'd to FTA. So I would say, yes, we would include
24 the FTA on -- as part of that decision-making process.

25 CHIEF TABORN: Okay. And the second question speaks to

1 your standard procedures relative to closing out corrective
2 actions. One of the requisites in identifying the accident or the
3 incident is to come up with mitigating actions that the transit
4 agencies would take to rectify that situation. Part of that
5 process would also be to identify that person who's held
6 responsible for it and a timeline in which that action will be
7 completed, is that not true?

8 MR. BASSETT: Yes, that's correct. And the chief brings
9 up an important point, which is that the TOC does not approve what
10 we consider to be interim mitigation measures. For example, if
11 the rail department finds itself with a broken rail, they do not
12 call the TOC and ask for permission to implement the corrective
13 action of repairing it. However, if WMATA's hazard management
14 process identifies that there are a number of broken rails in the
15 same area under the same weather conditions, we would ask for
16 WMATA to evaluate the necessity of a corrective action plan to
17 address that systemic problem.

18 CHIEF TABORN: So in speaking directly to the corrective
19 actions associated with 2004, WMATA did in fact provide those
20 corrective actions, along with the person who was assigned to do
21 that and the timeline in which we were going to complete that,
22 correct?

23 MR. BASSETT: WMATA did provide corrective action plans
24 to respond to their internal recommendations of the -- I'm sorry.
25 Which source of caps are you referencing from 2004?

1 CHIEF TABORN: 2004.

2 MR. BASSETT: Do you mean the triennial audit?

3 CHIEF TABORN: Yes, sir.

4 MR. BASSETT: Yes, WMATA did provide corrective action
5 plans to respond to the findings of the triennial audit from 2004.

6 CHIEF TABORN: Thanks very much.

7 CHAIRMAN SUMWALT: Thank you, Chief. Now we go to the
8 Washington, D.C. Fire and EMS Department.

9 CHIEF SCHULTZ: No questions, thank you, Chairman.

10 CHAIRMAN SUMWALT: Thank you, Chief.

11 Amalgamated Transit Union?

12 MS. JETER: I'd like to know, are you all appointed by
13 the same individuals or any of the same individuals that also
14 appoint the individuals to the Metro board?

15 MR. MADISON: For the District of Columbia, no.

16 MS. JETER: Okay.

17 MR. BASSETT: For Virginia, no. The Virginia appointees
18 to the board are made by a different organization than my
19 leadership.

20 MS. JETER: Okay, Mr. Bassett, are you the only person
21 who is, I guess, categorized as being the full-time employee
22 within TOC?

23 MR. BASSETT: My primary job function, based on my hire
24 from my employer, is to serve on the TOC. I think the TOC is
25 roughly comparable to an organization, if you're familiar with it,

1 like the Joint Terrorism Task Force, where you have standing
2 agencies who contribute personnel on a standing basis to the
3 effort of, you know, in the JTTF's example, fighting terrorism, in
4 our case, providing oversight under 659. The personnel may change
5 and in some cases somebody who's assigned to the JTTF may find
6 themselves with some other job duties, however, they are still
7 assigned as a member of that task force. I would consider us
8 similar.

9 We are seconded staff to the TOC, and while I may be
10 assigned full time, 100 percent of my time to the TOC, I don't
11 think that that minimizes the contributions that other TOC members
12 make while balancing some other job duties, some of which may
13 consume five percent of their time, some of which may consume 50
14 percent of their time.

15 MS. JETER: Yeah, assuming that that's what I'm
16 implying, and I'm not.

17 MR. BASSETT: Oh, I apologize.

18 MS. JETER: My question to you is, Are you the only
19 person that is specifically working with TOC 100 percent of your
20 time?

21 MR. BASSETT: I am the only person whose primary job
22 duty is being -- is working on the TOC.

23 MS. JETER: Okay. My last question. Has TOC ever
24 considered or made a recommendation to WMATA or to WMATA board, or
25 to the safety department, that notification should be given to the

1 employees based on this hazard alert that you spoke of earlier?

2 MR. BASSETT: In my recollection, I can't remember ever
3 discussing such a particular topic, but it's certainly something
4 we would take under advisement.

5 MS. JETER: Thank you, Mr. Chairman.

6 CHAIRMAN SUMWALT: Thank you, Ms. Jeter.

7 Alstom?

8 MR. ILLENBERG: Mr. Chairman, no questions.

9 CHAIRMAN SUMWALT: Thank you very much.

10 Ansaldo?

11 MR. PASCOE: No questions.

12 CHAIRMAN SUMWALT: No questions? Thanks.

13 FRA?

14 MR. McFARLIN: Yes, thank you. Just briefly.

15 Mr. Bassett, please, I believe you said that the TOC
16 requires WMATA to report instances of accidents and incidents.

17 MR. BASSETT: We do, under the authority of 659.

18 MR. McFARLIN: Is that terminology specifically defined?
19 Accidents, incidents.

20 MR. BASSETT: Yes, it is. There are a series of what we
21 call reportability thresholds that are set out within 659 and
22 which are mirrored within our program standard. These include any
23 accident or incident on rail transit controlled property that
24 impacts \$25,000 or more worth of damage; requires immediate
25 hospital transport for two or more individuals; involves a

1 fatality at the scene of a rail transit controlled incident within
2 30 days of that incident; a mainline derailment as well as a
3 couple of others.

4 MR. McFARLIN: Thank you. Has TOC ever performed an
5 audit specific to WMATA's reporting compliance?

6 MR. BASSETT: We have not performed an audit specific to
7 their reporting compliance. However, the safety department and
8 the organization as a whole's ability to implement the
9 requirements of 659 as well as our program standard are evaluated
10 on a triennial basis through our auditing program.

11 MR. McFARLIN: Thank you. And lastly, because it has
12 been asked previous, does the TOC have any requirement or even a
13 suggestion or a request that WMATA report to them instances of
14 signal or train control, let's say, wrong side or unsafe failure?

15 MR. BASSETT: We do not outline specific unsafe
16 conditions. We rely on WMATA to categorize and identify hazards
17 that are critical to the safety and security of the system. But
18 in our program standard we do require WMATA to immediately report
19 hazardous conditions such as the one that you notified. However,
20 we rely on WMATA to make the determination that they are in fact a
21 potentially catastrophic incident and we base our -- we are
22 reliant on them to make that determination and then to notify us.
23 As the chief mentioned yesterday, WMATA has been, especially
24 recently, making a significant effort to report such incidents.

25 MR. McFARLIN: Well, I guess that kind of raised one

1 last question in my mind. In light of your response, has the TOC
2 ever attempted to perform an audit of any records on WMATA,
3 representing those types of failures, in order to determine
4 whether they've been shared with you appropriately?

5 MR. BASSETT: If I could repeat back your question just
6 to ensure that I understand it, you're asking whether or not we
7 have evaluated WMATA's records of their reports of such incidents
8 with a specific eye towards determining whether we should
9 establish reporting requirements for those?

10 MR. McFARLIN: That would be one way to put it, yes.

11 MR. BASSETT: Okay. I would say that we have not
12 conducted a review of such incidents with that specific focus.
13 However, I would say that we have reviewed both incident reports
14 and maintenance records to evaluate their compliance with their
15 own hazard management program, which I believe would address your
16 concern.

17 MR. McFARLIN: Thank you. No further questions.

18 CHAIRMAN SUMWALT: Thank you, Mr. McFarlin.

19 Now the FTA?

20 MR. FLANIGON: Thank you. A couple of quick questions
21 just following up on one that was asked. In terms of both the TOC
22 -- and I guess I could ask this to Matt, since you were answering
23 the question before. In terms of the TOC triennial audit of WMATA
24 as well as the FTA triennial audit of the TOC, is the accident
25 reporting process and WMATA's compliance with that, if you will,

1 is that one of the audit elements that gets looked at in both of
2 those audits?

3 MR. BASSETT: Yes, we evaluate their compliance with our
4 accident and incident reporting requirements. And we don't just
5 wait until the audit. We follow up with them on an ongoing basis.
6 If, for example, there is -- if, for example, they "underreport"
7 an incident, you know, they notify us 24 hours later of an
8 incident that should have been reported within two hours, then we
9 follow up with them and we help to ensure that it doesn't happen
10 in the future, and they've been very responsive when that's
11 happened.

12 MR. FLANIGON: Okay, great. And then also for
13 Mr. Bassett. Following up on a question that one of the Technical
14 Panel asked about your contractor and their performance of work
15 for WMATA as well as for you, is that something that would be
16 prohibited by the conflict of interest section of C.F.R. 649?

17 MR. BASSETT: It very well might be. I believe so.

18 MR. FLANIGON: Okay, thanks. And one last question for
19 Mr. Madison. There were a series of questions about your -- you
20 being the TOC, your ability or lack of ability to assess civil
21 penalties, fines, et cetera, or otherwise compel WMATA to be
22 responsive. Would that kind of authority be helpful to an
23 organization like the TOC to be more effective?

24 MR. MADISON: I don't know that I would say -- would
25 want to say that it would or would not. But really I would just

1 say that if there's anything that would kind of help improve the
2 oversight the rail safety, rail transit system, then we would be
3 in favor of that. But I couldn't specify whether it would be
4 specifically, you know, the ability to issue civil penalties or
5 fines.

6 MR. FLANIGON: Thanks.

7 CHAIRMAN SUMWALT: No more questions, Mr. Flanigon?
8 Okay.

9 MR. FLANIGON: None.

10 CHAIRMAN SUMWALT: Thank you.

11 Are there any follow-up questions from the parties?

12 (No response.)

13 CHAIRMAN SUMWALT: Okay, seeing none, we will go back to
14 the Technical Panel. Mr. Downs, I understand you have some
15 questions. Thank you.

16 MR. DOWNS: Thank you, Chairman. Thank you, Chairman.
17 Yeah, I just have a couple of quick questions on my topic, TOC's
18 involvement in WMATA emergency training and preparedness training
19 and planning. The first one I'd like to address to Mr. Madison.

20 In the TOC's program standards and procedures manual,
21 are there provisions that address emergency training and planning
22 activity requirements for WMATA and what's TOC's mechanism for
23 assuring that WMATA appropriately executes those?

24 MR. MADISON: Let's see. Yes, under the SSP -- well,
25 for the program standard and under the SSPP we do have provisions

1 that -- where the TOC does look at any emergency planning that
2 WMATA may do, and typically they do keep us in the loop as to what
3 type of events they may be planning and we also receive
4 invitations to attend those events. It's often to observe.

5 MR. DOWNS: Is there a mechanism for assuring that the
6 plans are properly executed?

7 MR. MADISON: Yes, and that would -- that just goes back
8 to our program standard and it just looks at -- once we've
9 participated in the event, we typically would, you know, offer any
10 comments or reviews of what we thought of the event and how some
11 improvements could be made.

12 MR. DOWNS: And generally, can you offer an opinion
13 maybe as to the types of exercises that have been appropriate for
14 the type of operation that they conduct?

15 MR. MADISON: Just to offer an opinion, yes, I think the
16 types of events that they have performed are appropriate.

17 MR. DOWNS: Mr. Bassett, can you offer any thoughts on
18 that?

19 MR. BASSETT: Yes, I can. WMATA's emergency exercises
20 are governed by the Homeland Security Exercise and Evaluation
21 Program, which is administered by the Department of Homeland
22 Security. So this is not -- in terms of setting TOC-specific
23 requirements for how WMATA conducts emergency exercises and
24 planning, we don't set those through our program standard or
25 require them to do so. Their security and emergency preparedness

1 plan, which is covered by our program standard and which we review
2 on a yearly basis, does address exercises and emergency planning.
3 However, that document, due to the obvious security sensitive
4 nature of it, is protected information. They do allow us access
5 to it and we review it on a yearly basis. In terms of
6 participation in exercises, WMATA has been very good with us in
7 terms of offering invites to exercises and for example, Operation
8 Troubled Waters, which happened in 2007 and involved a car-borne
9 fire on the Yellow Line bridge between D.C. and Virginia. They
10 invited us to participate.

11 They also invited us back when they were still running
12 this program to serve, in fact, as judges at an emergency response
13 evaluation exercise that they called their fire department rodeo,
14 where they brought in area fire departments and allowed them to
15 undertake various judged activities that were specific to the
16 nature of responding to emergencies on the Metro system, timing
17 how fast they placed warning and strobe devices on the third rail,
18 for example.

19 So I would say that I'm very satisfied and in fact, you
20 know, once we conclude on Thursday, TOC members will in fact be
21 going up to Friendship Heights to observe their emergency
22 exercise, which is very timely and is responding to a potential
23 active shooter scenario. So I would say that their -- especially
24 with the leadership of their office of emergency management, I
25 would say that they've done an exceptional job in involving us in

1 emergency planning and activities and preparation.

2 MR. DOWNS: Thank you. And this leads to a question,
3 actually, that was asked of WMATA yesterday and they didn't have
4 the documentation in front of them, so they kind of deferred to
5 you. What was the most recent activity that the TOC attended, a
6 training activity, a drill that you folks attended?

7 MR. BASSETT: The most recent training that we attended
8 that I can remember was earlier this month at their Carmen Turner
9 Facility. TOC members, as part of -- partially because we needed
10 to recertify our right-of-way training cards, TOC members went to
11 the Carmen Turner Facility to go through their right-of-way worker
12 protection class along with some other individuals. So that's the
13 most recent training that I can recall that we went through.

14 MR. DOWNS: Was that a training drill or an exercise or
15 was that just a recertification class?

16 MR. BASSETT: That was a training class that was held at
17 their emergency response facility.

18 MR. DOWNS: It was not a training drill exercise?

19 MR. BASSETT: Oh, in terms of a training drill, off the
20 top of my head, I know that we've been to at least one or two more
21 recently than the 2007 Troubled Waters incident, but I can't
22 remember that off the top of my head, but I would be happy to get
23 you that information.

24 MR. DOWNS: Well, that's not necessary. Suffice it to
25 say, was it within the last year or so?

1 MR. BASSETT: Yes.

2 MR. DOWNS: Okay, because their program plan does
3 require annual major drills.

4 MR. BASSETT: Yes. And I would say that their program
5 plan's requirement to address major drills or exercises is not
6 only addressed by their sort of big show exercises where there
7 are, you now, fire trucks and smoke machines and a lot of
8 logistical input, but they do a very good job with tabletop
9 planning and just functional exercises and drills within the
10 agency, within their leadership and their supervision. So we're
11 very familiar with that program and I would say it's very safe to
12 say that they've been doing smaller-scale drills on par with their
13 requirements in the SSPP and our program standard.

14 MR. DOWNS: Thank you.

15 Mr. Chairman, that concludes my questions.

16 CHAIRMAN SUMWALT: Thank you.

17 Mr. Gura?

18 MR. GURA: Yes. Mr. Bassett, you were questioned a
19 little earlier by the FTA, where they mentioned conflict of
20 interest and I think they said -- I thought I heard them said 649,
21 led you led you into 649. It's actually 659.41 and I wanted to
22 clarify that record for you.

23 MR. BASSETT: Oh, thank you. Yes, it is required in 659
24 to avoid conflict of interest and it's also reflected in our
25 system safety program standard.

1 MR. GURA: Thank you.

2 CHAIRMAN SUMWALT: No further questions from the
3 Technical Panel?

4 (No response.)

5 CHAIRMAN SUMWALT: Seeing none, we'll now go to the
6 Board of Inquiry and Mr. Ritter.

7 MR. RITTER: No questions.

8 CHAIRMAN SUMWALT: Dr. Kolly? Mr. Dobranetski?

9 HEARING OFFICER DOBRANETSKI: No questions.

10 CHAIRMAN SUMWALT: Uh-oh. So that makes me the bad guy.
11 I know, I'm the only between us and lunch. I am cognizant of
12 that.

13 Mr. Madison, as chairman of TOC, how many committee
14 hours did members spend in their oversight role last year of TOC?
15 I have the figures for 2008. I'm sorry. In your TOC duties, how
16 many hours did you provide in your oversight role of WMATA?

17 MR. MADISON: For the total number of TOC hours, we had
18 -- well, we actually have -- the most recent years for us are from
19 2008.

20 CHAIRMAN SUMWALT: Yes, that's what I have.

21 MR. MADISON: Okay.

22 CHAIRMAN SUMWALT: Go ahead, I'd like to see this.

23 MR. MADISON: TOC members spent a total of 2,291 hours
24 devoted to state safety oversight functions and then our
25 consultant hours total 1,710.

1 CHAIRMAN SUMWALT: Okay. And so here's my question. If
2 TOC members spent 2291 and an average work year for one person is
3 about 2,000 hours, I don't understand the math on that, because
4 Mr. Bassett is 100 percent -- and I realize you're new in your job
5 in the State of Virginia, but 100 percent of your time is for TOC
6 and Mr. Madison, I understand, about 90 percent of your time is
7 for TOC. I don't follow the math.

8 MR. MADISON: Well, that's in 2009.

9 CHAIRMAN SUMWALT: Okay. I understand.

10 MR. MADISON: I mean, the times that we're referring to
11 are from 2009, but the numbers that we have here are from 2008.

12 CHAIRMAN SUMWALT: Okay. So have you spent a lot more
13 time in 2009?

14 MR. MADISON: Yes, we have.

15 CHAIRMAN SUMWALT: Okay. And to be clear, Mr. Bassett,
16 you are employed, so you basically put in about 2,000 hours a
17 year, since you're full-time work is for TOC?

18 MR. BASSETT: Yes, sir.

19 CHAIRMAN SUMWALT: Okay. And Mr. Madison, you're
20 putting in about 90 percent of a full-time job for TOC?

21 MR. MADISON: Yes.

22 CHAIRMAN SUMWALT: Okay, I just wanted to clarify that.
23 Thank you.

24 MR. BASSETT: I think you would find that reflected in
25 our 2009 numbers when they are available.

1 CHAIRMAN SUMWALT: Okay. And those should be available
2 when?

3 MR. BASSETT: We are already planning on submitting them
4 to the Federal Transit Administration in time for their March 15th
5 deadline, which is our annual reporting requirement from which we
6 submit information like that, as well as open accidents and other
7 information. However, I think that that specific information we
8 could probably get for you much sooner, like by next Wednesday.

9 CHAIRMAN SUMWALT: That's okay. If we could get it by
10 March 15th. Whenever you're gathering it and providing it --

11 MR. BASSETT: Oh, certainly.

12 CHAIRMAN SUMWALT: -- to FTA, that would be good and
13 that will be an official request from the Chair. Thank you. Has
14 the oversight role, Mr. Madison, the oversight role of TOC, been
15 restrained or curtailed due to the lack of funding, the lack of
16 manpower, or any other reasons?

17 MR. MADISON: No, we haven't been restrained due to our
18 lack -- not lack of funding, but our existing funding. We do find
19 that we're able to carry out of all of our duties as required
20 under 659. You know, if you're asking as to whether or not we
21 could use additional resources, I mean, you know, you can always
22 use additional resources, but we are able to carry out our
23 functions as required under 659.

24 CHAIRMAN SUMWALT: Okay. And that's really what I'm
25 wondering. Yes, you're right, we could all use additional

1 resources. I understand that. Mr. Madison, I'm interested in the
2 possible possibility of a conflict of interest with the members of
3 the TOC and especially the representative from the District of
4 Columbia, because there's a very close relationship between your
5 boss' boss and the WMATA board. In the other jurisdictions it's
6 not quite as close of a relationship. But on WMATA's board, one
7 of the board members is the city council -- is the city
8 administrator; is that correct?

9 MR. MADISON: Well, I believe you're referring to
10 Jim Graham.

11 CHAIRMAN SUMWALT: No, he's an elected official.

12 MR. MADISON: Oh, I'm sorry. Neil Albert, yes.

13 CHAIRMAN SUMWALT: What we have is the -- we do have a
14 council member who's an elected official, who is on the WMATA
15 board. But as I understand it, we also have the D.C. council
16 administrator, the D.C. city administrator who is on the WMATA
17 board. So my question to you is, is that you have to pay -- you
18 have to provide oversight wearing one hat, oversight of WMATA, but
19 on the hand you're actually working for people that you're
20 providing oversight for.

21 MR. MADISON: Well, actually, in my role I kind of see
22 myself as wearing two different hats. I have my D.C. DOT hat, if
23 you will, and also my Tri-State Oversight Committee hat. From the
24 time that I've been on the committee, I haven't had any issue with
25 anyone from, you know, I guess the city administrator's office or

1 the mayor's office trying to, I guess, curtail my involvement with
2 my role on the TOC.

3 CHAIRMAN SUMWALT: Yes, but where do you get a paycheck
4 from? Do you get a paycheck from TOC?

5 MR. MADISON: No, I get a paycheck from the District of
6 Columbia.

7 CHAIRMAN SUMWALT: Right. And so I am worried about, if
8 nothing else, the appearance of conflict of interest. That's why
9 the Congress in 1974 moved this agency, the NTSB, out from
10 underneath the Department of Transportation, because they did not
11 want even the appearance of a conflict of interest. Independent
12 means that you are independent and you're not influenced by other
13 people or agencies or organizations and this, to me, doesn't look
14 right. You're overseeing somebody, but you're working for those
15 people.

16 MR. MADISON: Well, what I can do is take that concern
17 back to my agency heads and see if we can work out a solution, if
18 that would be --

19 CHAIRMAN SUMWALT: Well, I don't think it's incumbent on
20 you to do that. I think it's incumbent upon the NTSB, if we feel
21 that that is a problem, to make that known and our final report on
22 this accident has not been yet raised, has not been released. But
23 it will be something that I potentially would want to probe in the
24 Board meeting, when we finally have this -- when we finally have
25 that Board meeting, because I would like to know if you have any

1 administrative controls in place that do insulate you from having
2 influence coming down from the top or something like that. Do you
3 have anything that truly allows you the autonomy that you need to
4 properly provide your oversight role?

5 MR. MADISON: I don't think that we have anything that
6 would be in place that would kind of separate me from that.

7 CHAIRMAN SUMWALT: Thank you. And I'll move on to
8 another topic. Have you ever, in your knowledge, to either of
9 you, because, Mr. Bassett, I understand you've been on the TOC
10 since '06 or '07.

11 MR. BASSETT: '06, sir.

12 CHAIRMAN SUMWALT: '06, which was the formation of the
13 TOC?

14 MR. BASSETT: No, sir, the TOC was formed in 1997.

15 CHAIRMAN SUMWALT: In '97. Thank you. Has TOC ever
16 provided a briefing or otherwise had official contact with the
17 WMATA board of directors?

18 MR. BASSETT: Yes, sir.

19 CHAIRMAN SUMWALT: When was that, Mr. Bassett?

20 MR. BASSETT: November 2009.

21 CHAIRMAN SUMWALT: November 2009. Thank you. Are the
22 TOC meetings open to public?

23 MR. BASSETT: It has been the determination after public
24 requests from media outlets and individuals to be permitted into
25 TOC meetings. The individual TOC jurisdictions did a -- had our

1 general counsels evaluate each respective jurisdiction's open
2 meetings law. It was the legal opinion of our legal counsels that
3 our meetings were working sessions and were as such not subject to
4 the open meetings laws of Maryland, D.C., or Virginia. However,
5 this of course does not obviate the need for public involvement
6 and information about the TOC and our activities. Such a goal has
7 led to the setting up of this TOC website, and the concept of
8 having public meetings has been discussed. But as it currently
9 stands today, TOC meetings are not governed by open meetings laws
10 of any of the three jurisdictions and as such are not open to the
11 public.

12 CHAIRMAN SUMWALT: Okay. So much for transparency. Is
13 the public given -- well, are minutes kept of the meetings and are
14 they posted on line?

15 MR. BASSETT: Yes and yes.

16 CHAIRMAN SUMWALT: Okay, thank you.

17 MR. BASSETT: If they have not, I would add that we have
18 had some administrative issues in getting them posted on line, but
19 if I can provide you guys with a link to our website, you will see
20 minutes posted on line.

21 CHAIRMAN SUMWALT: Okay, thank you. We've all been on
22 your website up here and --

23 MR. BASSETT: And you're not finding anything there?

24 CHAIRMAN SUMWALT: Well, we didn't find them, but --

25 MR. BASSETT: I'd be more than happy to -- the website's

1 not maintained by my jurisdiction, but we have made an effort to
2 get them out there. If they're not up there right now, then
3 that's my oversight and I'll take responsibility for that.

4 CHAIRMAN SUMWALT: Okay, thank you. I'm going to end on
5 this one. And yesterday we had an answer that could've been the
6 five-minute answer or the 25-minute answer and --

7 MR. BASSETT: I'll try to keep it to five.

8 CHAIRMAN SUMWALT: -- I do want to know the basic answer
9 to this. There was a lot of public attention surrounding the lack
10 of access to the WMATA tracks this past year, so why don't you
11 just tell us about that.

12 MR. BASSETT: Certainly. We made our efforts to
13 evaluate WMATA's implementation of Special Order 0706. Those
14 started in late 2008, early 2009. When we came on site we had a
15 number of interviews with WMATA personnel. We had a number of --
16 and they informed us, however, that since we would be viewed as
17 "contractors," we would not be permitted to access the right-of-
18 way under live track conditions. We tried to work this concern
19 out on a one-on-one in person.

20 At the time, our primary point of contact was the WMATA
21 chief safety officer on this particular issue. After being unable
22 to work it out on an interpersonal basis, we put it in writing and
23 we sent them a letter. The letter that they responded with
24 indicated that they would be remaining with their interpretation
25 of SOP 33 and that we would not be permitted access. This letter

1 was sent on May 29th. We were working with our -- we were holding
2 internal discussions about the best way to proceed and we were --
3 in fact, I believe we'd scheduled a meeting with the deputy
4 general manager to go over this particular issue just before
5 June 22nd happened. As you can imagine, June 22nd shifted a great
6 deal of our focus. E-mails and correspondence did go over to
7 WMATA personnel subsequently in July and there were discussions at
8 our leadership level about whether or not we wanted to -- what our
9 course of action was.

10 And I'm going to refrain from going into excessive
11 detail there, simply because I'm not privy to the discussions that
12 happened among the Secretary of Transportation or the District
13 DOT. But this issue really came to a head in the fall of 2009
14 when there were Freedom of Information Act requests made of us and
15 the correspondence that went back and forth became public. The
16 senior leadership at WMATA was not fully aware of this incident,
17 of what had been going on and I think that as the information came
18 out, the senior leadership at WMATA as well as the board of
19 directors were very responsive to this concern.

20 And I think, if I have to answer the fundamental cause
21 of what I perceived your question to be, which is why did this
22 happen, why was there a fundamental breakdown in terms of the
23 ability of our group to get out on to the track, I would say it
24 was our -- it was a reliance upon that one individual, the chief
25 safety officer, who had a significantly divergent view of the

1 access we should've been permitted. And I think that while we did
2 contact other individuals within WMATA, and while we did have
3 discussions with our policy level folks, and while we did
4 ultimately receive the access that we had sought through, you
5 know, working with WMATA's leadership, with the board as well as
6 others, I would say that we probably focused our efforts on
7 dealing with that individual as the chief safety officer mostly
8 out of past practice, because in the past we had almost entirely
9 dealt with the chief safety officer, so we felt this was something
10 that we needed to, you know, focus our efforts on dealing with
11 him.

12 CHAIRMAN SUMWALT: I appreciate that summary. And by
13 the way, you mentioned, I think, that you briefed the WMATA board,
14 I believe, you said November the 19th.

15 MR. BASSETT: November of 2009. I'm not sure what the
16 exact date is.

17 CHAIRMAN SUMWALT: And was this the catalyst for that
18 meeting with the board?

19 MR. BASSETT: Prior to the meeting with the board, by a
20 couple of days, there had been discussions with WMATA's
21 leadership, that they would in fact grant that access. But the
22 meeting with the board certainly served to solidify the commitment
23 on behalf of all parties to ensuring access.

24 CHAIRMAN SUMWALT: Thank you. Before we wrap up,
25 somebody has sent me a link off of your web page for the minute

1 meetings. So thank you for that. The witnesses are released from
2 this panel.

3 MR. BASSETT: Thank you.

4 (Witnesses excused.)

5 CHAIRMAN SUMWALT: Mr. Madison, I think you'll be on the
6 next panel. We will adjourn. We will reconvene at 2 o'clock. We
7 are in recess.

8 (Whereupon, at 1:00 p.m., a lunch recess was taken.)

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A F T E R N O O N S E S S I O N

(1:59 p.m.)

CHAIRMAN SUMWALT: Okay, we are back in session and Mr. Dobranetski, are you ready to swear in the witnesses for the next panel?

HEARING OFFICER DOBRANETSKI: Yes, I am. This will be Panel Number 4. Ladies and gentlemen, raise your right hand.

(Witnesses sworn.)

HEARING OFFICER DOBRANETSKI: Ms. Gregory, for the record, would you state your full name, your current employer, your title, and your employer's address?

MS. GREGORY: My name is Georgetta Gregory. I am the Program Manager at the California Public Utilities Commission for the Rail Transit and Crossings Branch. My office is located at 320 West 4th Street, Suite 500, Los Angeles, California.

HEARING OFFICER DOBRANETSKI: And how long have you been in your current position?

MS. GREGORY: My current position, approximately a year and a half.

HEARING OFFICER DOBRANETSKI: And what are your duties and responsibilities?

MS. GREGORY: I manage the program for both rail transit, the state safety oversight functions, and also the railroad crossings in the state. My staff is responsible for the safety oversight of the transit as well as the engineering and

1 safety of the crossings.

2 HEARING OFFICER DOBRANETSKI: How long have you been
3 employed by the California Public Utilities Commission?

4 MS. GREGORY: Four years.

5 HEARING OFFICER DOBRANETSKI: Could you give us a brief
6 description of the position you held prior to working for the
7 California PUC?

8 MS. GREGORY: Prior to joining the State, I worked with
9 Union Pacific Railroad for 31 years. I worked a host of
10 positions, mostly in the operating department. I left there. My
11 last position there was a Senior Manager of Terminal Operations.

12 HEARING OFFICER DOBRANETSKI: Thank you.

13 Mr. Clark, will you state your full name, your current
14 employer, your correct title, and your company address?

15 MR. CLARK: Yes, sir. My name is Richard W. Clark,
16 spelled C-l-a-r-k. I'm the Director of the Consumer Protection
17 and Safety Division at the California Public Utilities Commission.
18 My offices are at 505 Van Nuys Avenue in San Francisco,
19 California.

20 HEARING OFFICER DOBRANETSKI: And how long have you been
21 in your current position?

22 MR. CLARK: Nine years.

23 HEARING OFFICER DOBRANETSKI: And your duties and
24 responsibilities?

25 MR. CLARK: Essentially in charge of the enforcement

1 division at the Commission. We have a broad mandate, which is I
2 influence and implement the policies of the Commission relative to
3 natural gas, consumer protection and safety, and natural gas,
4 electricity, communications; consumer protection for household
5 goods carriers and passenger carriers; and then about half of my
6 staff are involved in railroad safety. I have inner-city and
7 commuter rail; I have light rail; I have freight rail and I have
8 rail crossings.

9 HEARING OFFICER DOBRANETSKI: And how long have you been
10 employed by the California PUC?

11 MR. CLARK: For nine years.

12 HEARING OFFICER DOBRANETSKI: And your prior positions
13 you've held?

14 MR. CLARK: I spent 25 years as a fraud detective, a
15 labor fraud detective and enforcement official, both in the
16 private sector and in the public sector. I was Chief Deputy Labor
17 Commissioner of the State of California for about a year, year and
18 a half, before coming to the Public Utilities Commission in 2000.

19 HEARING OFFICER DOBRANETSKI: Okay, thank you.

20 Ms. Galluci?

21 MS. GALLUCI: Hello. Good afternoon. I am
22 Grace Galluci. I am Deputy Executive Director for the Regional
23 Transportation Authority in Chicago, Illinois. Our offices are
24 located at 175 West Jackson Boulevard, Suite 1550, Chicago,
25 Illinois 60604.

1 HEARING OFFICER DOBRANETSKI: And how long have you been
2 in your current position?

3 MS. GALLUCI: I've been in my current position nearly
4 three years.

5 HEARING OFFICER DOBRANETSKI: And what are your duties
6 and responsibilities?

7 MS. GALLUCI: My duties and responsibilities is to
8 manage the Research Analysis and Policy Development Department and
9 that department is responsible for oversight activities in
10 addition to rail safety oversight. I am responsible for project
11 management oversight, asset management oversight, the audit
12 function, and performance management.

13 HEARING OFFICER DOBRANETSKI: And how long have you been
14 employed by the Regional Transit Authority?

15 MS. GALLUCI: Nearly three years.

16 HEARING OFFICER DOBRANETSKI: And could you give us a
17 brief description of prior positions you've had with the
18 organization and any before that organization?

19 MS. GALLUCI: Before my employment with the Regional
20 Transportation Authority, I worked for the Greater Cleveland
21 Regional Transit Authority and my last position with them was the
22 Executive Director of the Office of Management and Budget.

23 HEARING OFFICER DOBRANETSKI: Thank you.

24 Mr. Cristy. Please give us your full name, current
25 employer, your title and company address.

1 MR. CRISTY: Brian Cristy, Director, Transportation
2 Oversight Division for the Massachusetts Public Utility
3 Commission. I've been with the Commission for 18 years as the
4 division director and the address is One South Station, Boston,
5 Mass.

6 HEARING OFFICER DOBRANETSKI: And how long have you been
7 in your current position?

8 MR. CRISTY: Eighteen years.

9 HEARING OFFICER DOBRANETSKI: And your duties and
10 responsibilities?

11 MR. CRISTY: Oversight of the MBTA, rail transit safety;
12 oversight of the 16 bus-only transit systems in Massachusetts;
13 passenger carrier oversight for safety of equipment and operation;
14 household good oversight and towing oversight.

15 HEARING OFFICER DOBRANETSKI: And how long have you been
16 employed with that organization?

17 MR. CRISTY: Eighteen years.

18 HEARING OFFICER DOBRANETSKI: Could you give us a brief
19 description of the positions you've held with that organization
20 and other organizations prior to coming to them?

21 MR. CRISTY: I joined the PUC as the director of the
22 Transportation Oversight Division eighteen years ago. Prior to
23 that, I conducted management and systems consulting.

24 HEARING OFFICER DOBRANETSKI: Thank you.

25 Mr. Madison, I didn't forget you, but you're still sworn

1 in from earlier this morning.

2 Mr. Chairman, the witnesses are qualified and the
3 questioning can begin with Mr. Klejst.

4 CHAIRMAN SUMWALT: Thank you, Mr. Dobranetski.

5 And Mr. Klejst?

6 MR. KLEJST: Thank you, Mr. Chairman.

7 Good morning. Good afternoon, everyone. The process
8 I'm going to use for your panel is to ask all of you a series of
9 questions in an effort to develop the manner in which the System
10 Safety Program Plan and state safety oversight is implemented in
11 your respective areas. So what I'm going to do is ask a question
12 individually of each of the panel members and then go on to the
13 next question after that, so that should help the information flow
14 and get this done as expeditiously as we possibly can. I'll begin
15 the questioning with Ms. Gregory.

16 Does your state have a process that would allow your
17 state safety oversight agency to suspend operations if there was a
18 significant safety issue developed by your agency?

19 MS. GREGORY: Yes, it does. We have a process where we
20 would do an order to show cause and if the safety conditions were
21 egregious enough, we would stop service.

22 MR. KLEJST: Thank you.

23 Mr. Madison?

24 MR. MADISON: The Tri-State Oversight Committee does not
25 have a process in place by which we could suspend operation.

1 MR. KLEJST: Thank you.

2 Ms. Galluci?

3 MS. GALLUCI: No, we do not have the authority to do so.

4 MR. KLEJST: And Mr. Cristy?

5 MR. CRISTY: Yes. The Public Utility Commission has
6 that authority via a commission order.

7 MR. KLEJST: Can your state safety oversight
8 organization require the rail transit agencies to comply with
9 requirements of the System Safety Program Plan -- I'm sorry, the
10 Part 659 beyond which is identified in that plan? For example,
11 can you make your standards more -- can they exceed the
12 requirements of Part 659? Ms. Gregory?

13 MS. GREGORY: Yes, we can. We have a series of general
14 orders which do have additional standards that are not encompassed
15 in Part 659.

16 MR. KLEJST: Mr. Madison?

17 MR. MADISON: We currently just can only compel the rail
18 transit agent to comply with 659 and nothing further.

19 MR. KLEJST: Ms. Galluci?

20 MS. GALLUCI: We also can only comply with 49 C.F.R.
21 Part 659.

22 MR. KLEJST: And Mr. Cristy?

23 MR. CRISTY: Yes, we can exceed the requirements of
24 Part 659. The Commission has the authority to promulgate rules
25 and regulations as necessary.

1 MR. KLEJST: Does your state safety oversight agency
2 have a process in place for safety certification either for a new
3 line rail operation or an extension of existing line? Mr. Clark,
4 if you can respond for California, please?

5 MR. CLARK: Yes, we do have a process in place for
6 exactly that, all of those.

7 MR. KLEJST: Is that articulated in a particular
8 document?

9 MR. CLARK: It's in our General Order 164(d).

10 MR. KLEJST: Thank you.

11 Mr. Madison?

12 MR. MADISON: We actually just require that we monitor
13 the safety certification on behalf of WMATA and once it's in
14 place, then we compel them to comply with that certification.

15 MR. KLEJST: Also, if you could speak a little louder or
16 closer to the microphone, that would be helpful in capturing all
17 of your responses, please. I appreciate your cooperation.
18 Ms. Galluci.

19 MS. GALLUCI: No, we do not.

20 MR. KLEJST: And Mr. Cristy?

21 MR. CRISTY: Yes, we would have that ability.

22 MR. KLEJST: And how would that be articulated?

23 MR. CRISTY: Through an order of the Commission or
24 amendments to the system safety program standard through a rule
25 making. This next question focuses on the process that is used by

1 your agency to deal with open corrective action items once an
2 audit has been performed. If you could describe for us briefly,
3 please, the process in place to develop those items to the point
4 where they're brought to closure. Ms. Gregory, if you could
5 respond for California?

6 MS. GREGORY: Yes, thank you. First off, we develop
7 corrective actions or we require the transit agencies to develop
8 corrective actions for any findings of noncompliance, not simply
9 the triennial audit. Then the process is they develop their
10 corrective actions which we approve or discuss with them and
11 alter, if necessary. Then the commission staff tracks those
12 through a database through until completion. The triennial audit
13 recommendations, those are generally ordered by the commission
14 because our triennial audit is a public process.

15 It is filed with the commission, the commission votes to
16 approve or disapprove the report, and then there is a subsequent
17 order that orders the development of those corrective actions with
18 a timeline and a requirement to make periodic submissions. We
19 will track those until they are completed, then we will go out and
20 witness the completion and then close the corrective action if it
21 has been completed to our satisfaction.

22 MR. KLEJST: In the order that you refer to, if a
23 property were to be unable or unwilling to implement a particular
24 action, what is the consequence of that?

25 MS. GREGORY: We would again have a formal proceeding

1 called an Order Instituting Investigation whereas testimony would
2 be taken and the commission would make a ruling and order the
3 consequences, whatever they might be.

4 MR. KLEJST: Okay, thank you.

5 Mr. Madison for the Tri-State Oversight Committee?

6 MR. MADISON: Basically, what we do is we track our
7 corrective action plans through what we call a Corrective Action
8 Plan Matrix. That just allows us to keep track of all of the
9 comments or anything that may be pertaining to a particular
10 corrective action. What we do is we will review and provide
11 comments to WMATA on those corrective actions and continue to
12 track them through the matrix until they are closed.

13 MR. KLEJST: And if an open item is, in the opinion of
14 the Tri-State Oversight Committee, to be open for an excessive of
15 time or if the agency were to be unwilling to or unable to close
16 that out, what action could you take?

17 MR. MADISON: What we would do is if we found that an
18 item was on the matrix too long, we would continue to work with
19 them on it to seek out some kind of a resolution to that -- or to
20 that corrective action plan, and then we would continue to track
21 that until it is completed and then we would continue working with
22 them until we received the correct information that would allow us
23 to close that corrective action.

24 MR. KLEJST: Thank you.

25 And Ms. Galluci from Massachusetts -- I'm sorry, from

1 Illinois?

2 MS. GALLUCI: We also have a corrective action plan
3 matrix that we utilize to track open items. Those open items can
4 be either from the triennial review, various accident
5 investigations, or other kinds of situations. We work with the
6 agency in many cases to bring those to closure and in many cases
7 they do so independently. But in any event, we do follow up to
8 ensure, once the item is closed, that it is, in fact, witnessed to
9 be closed.

10 MR. KLEJST: And again, if a rail transit agency were
11 unable to close out or unwilling to close out a particular open
12 item, what action can your organization take?

13 MS. GALLUCI: We do not have any authority specific to
14 rail safety oversight; however, we do have the general ability to
15 reject the budget of the CTA for noncompliance in general.

16 MR. KLEJST: Thank you.

17 And for Massachusetts?

18 MR. CRISTY: According to our standard, the caps are
19 developed by the Authority. They're transmitted in the form of a
20 final report by the safety department to the department. We then
21 review, approve them. We require a timeline for implementation.
22 If they're unable to meet that, there is a mechanism for them to
23 request extensions. The department can grant the extension up to
24 a point; however, in the event that the transit authority, MBTA,
25 is unable to fulfill its obligation, the commission can order it

1 to do so and orders of the commission can only be appealed to the
2 State Supreme Court.

3 MR. KLEJST: Thank you. The requirement to investigate
4 accidents under 659 can either be done by the state safety
5 oversight agency or the rail transit agency have authorized. How
6 does your particular oversight agency handle that particular
7 issue? Mr. Clark?

8 MR. CLARK: The lower-level accidents are investigated
9 by the agency, themselves. The higher-impact accidents are
10 investigated by us. We review the accident investigations
11 typically at -- the ones that are done by the transit agencies, we
12 typically review those at the property of the rail transit agency
13 and if we think that they've done an inadequate job, then we take
14 over the investigation and complete it ourselves.

15 MR. KLEJST: Thank you.

16 Mr. Madison for TOC?

17 MR. MADISON: For the TOC, we deputize WMATA to conduct
18 investigations on the TOC's behalf and what we do is we typically
19 participate, as necessary, in that investigation.

20 MR. KLEJST: Ms. Galluci?

21 MS. GALLUCI: We also delegate that function to the
22 transit agency but do participate, as necessary, in the
23 investigations.

24 MR. KLEJST: And Mr. Cristy?

25 MR. CRISTY: Our -- allows the transit authority,

1 specifically the safety department, to conduct accident and
2 incident investigations on our behalf. However, members of my
3 staff participate in those, as well.

4 MR. KLEJST: What level of communication exists between
5 your state safety oversight agency and the rail transit agency,
6 itself? What I'd like to develop here is the specific person or
7 persons that you routinely communicate with as far as results of
8 audits, special audits or inspections, and more importantly, the
9 status of open corrective action plans. Ms. Gregory, please, from
10 California.

11 MS. GREGORY: Generally, the safety department is the
12 department charged with the responsibility of corralling the
13 communication, if you will. However, we are not limited to only
14 the safety department. My staff generally works with the safety
15 director and then the individual department heads, and then I
16 frequently have communications with the chief executive officers
17 and the department heads, like the chief operating officer and so
18 on. It's a very interactive relationship, very active
19 relationship, with all the properties.

20 MR. KLEJST: Would you ever have the need to, or have
21 you in the past had the need to communicate directly with the
22 board of directors for a given rail transit agency if there were
23 an issue that needed to be dealt with at that level?

24 MS. GREGORY: I personally have not. There have been
25 occasions when our commissioners have attended board meetings or

1 my director has attended board meetings. I have attended the city
2 supervisor meeting on one of the properties at one time.

3 MR. KLEJST: Mr. Clark, you may have had the occasion to
4 meet with boards of directors of rail transit agencies. Was that
5 by their invitation to you or your request to attend their
6 meeting?

7 MR. CLARK: Their public meetings, as my schedule
8 allows, I try to get to them. It's not been by invitation, it's
9 only been at my own instance, my own motivation, to go to those.
10 Typically, I communicate with the CEO. We require the CEO to be
11 present at the opening of a triennial audit and the closing of the
12 triennial audit, also.

13 MR. KLEJST: Thank you.

14 Mr. Madison?

15 MR. MADISON: Typically, communication back and forth
16 between the TOC and WMATA is primarily between the TOC chair or
17 the vice chair and the WMATA chief safety officer or staff members
18 within the safety office.

19 MR. KLEJST: And Ms. Galluci for the State of Illinois?

20 MS. GALLUCI: For the State of Illinois, we have
21 probably three different levels that we have communication. First
22 is at the CEO and president level, our executive director with the
23 president of the Chicago Transit Authority. They have at least
24 one meeting annually to discuss the state of safety affairs and
25 then other meetings, if necessary. We have presentations to our

1 board at least once a year, more if needed, and our board members
2 have the ability to speak directly to the board members of the
3 CTA.

4 But most importantly, in terms of day-to-day contact,
5 it's at the staff level and the vice president of CTA's safety
6 program communicates directly with myself and/or with my managers,
7 as well as her staff, communicate directly with my managers. We
8 have a very cooperative relationship, it is almost a partnership,
9 and therefore we invite them, on a quarterly basis, to work with
10 us not only to inform us of the safety status reports, but also to
11 participate in what we call safety discovery meetings whereby it
12 is an open forum for discussion and communication between the
13 agencies.

14 MR. KLEJST: Okay, thank you.

15 And for the Commonwealth of Massachusetts?

16 MR. CRISTY: Primary contact is also the safety
17 director, director of safety, but we also have, when necessary,
18 access to all operations departments. We have, contained in our
19 program, a standard requirement to meet quarterly. Quarterly
20 meetings are co-chaired by myself and the director of safety.
21 They include everyone from the general manager on down through the
22 ranks. I meet annually with the general manager and have open
23 access to the general manager at any time for whatever the topic
24 or need be.

25 MR. KLEJST: Okay, thank you. Now, the State Safety

1 Oversight Regulation, the specific reference is 659 Part 3.7
2 requires the oversight agency to initiate action when the NTSB
3 issues a recommendation that is applicable to a rail fixed guide-
4 way system. Please describe how your agency responds to these
5 recommendations and works with the rail transit agencies to
6 develop the recommendations made by the Safety Board.

7 Ms. Gregory, please, for California?

8 MS. GREGORY: Part 659 does require that the state
9 safety oversight agency communicate with the transit agencies and
10 formulate a plan to comply with those recommendations. As well,
11 our program standard, in one of general orders that is reiterated,
12 and a good example of that is one property that's been closed
13 following a commission order to cease and desist in 2001. There
14 are still two outstanding recommendations and just yesterday my
15 staff witnessed the compliance with one of those recommendations
16 and I'm anxiously awaiting their report to see how that went. And
17 once those two recommendations -- those were NTSB recommendations,
18 by the way -- and once those are closed to our satisfaction, we
19 will allow that property to resume service again.

20 MR. KLEJST: Did you say that they were or were not NTSB
21 recommendations?

22 MS. GREGORY: They are.

23 MR. KLEJST: They were NTSB recommendations?

24 MS. GREGORY: Yes.

25 MR. KLEJST: So if they failed to comply with the

1 agreed-upon action plan to implement, you issue that compliance
2 order, order to comply, and --

3 MS. GREGORY: Yes.

4 MR. KLEJST: -- suspend operations?

5 MS. GREGORY: Yes.

6 MR. KLEJST: Okay, thank you.

7 For the TOC, please, Mr. Madison?

8 MR. MADISON: Yes. For NTSB recommendations, we require
9 WMATA to draft corrective actions for those recommendations and
10 then they are added on to our corrective action plan matrix, which
11 we track.

12 MR. KLEJST: Similar in fashion to the way that an open
13 corrective action item was developed that you described earlier?

14 MR. MADISON: Yes.

15 MR. KLEJST: Thank you.

16 And for the State of Illinois?

17 MS. GALLUCI: We also would include those items onto our
18 corrective action plan matrix and follow the same procedures.
19 However, we would add one additional method of tracking and that
20 is that we would work with the transit agency to monitor
21 communication between the NTSB and the agency, and ensure that
22 follow-up is taken.

23 MR. KLEJST: Thank you.

24 And for the Commonwealth of Massachusetts, Mr. Cristy?

25 MR. CRISTY: Well, typically we attend as a party to the

1 investigation. We follow the investigation, the NTSB
2 recommendations. The standard requires that any recommendations
3 be developed into corrective action plans and submitted to the
4 commission for review. Most recently, we did this in the May '08
5 Green Line accident at Newton. We closed that out on
6 February 12th and submitted to the NTSB a copy of the close-out
7 letter describing the acceptance of the corrective actions and how
8 we intend to ensure that the corrective actions have been
9 implemented.

10 MR. KLEJST: Does your state safety oversight
11 organization provide any guidance or direction to your rail
12 transit agencies? For example, do you issue any bulletins that
13 may pass on, best practices, industry standards that apply to rail
14 transit agencies? Mr. Clark, if you could respond for California,
15 please.

16 MR. CLARK: Ms. Gregory might be able to give a more
17 granular --

18 MR. KLEJST: Sure. Ms. Gregory, then, please.

19 MR. CLARK: -- definition. However, I do know that we
20 do rule makings. We have rule-making authority as well as
21 enforcement authority. So typically, the way that we tee up a
22 question is that we open a rule making and we invite comments from
23 all the affected parties and the public and that sort of thing,
24 such as we're doing that right now. We're in the midst of that on
25 a ban on cell phone usage for transit operators and wayside

1 workers, we're also doing it in terms of wayside worker protection
2 rules.

3 MS. GREGORY: And then just to -- more specifically, as
4 well, when we get best practices or newsletters or information
5 from the industry, manufacturers or our friends at the Federal
6 Transit Administration, we make sure that's all shared with the
7 properties, as well.

8 MR. KLEJST: And could you require the rail transit
9 agency to implement any of the best practices other than through
10 that rule making process?

11 MS. GREGORY: Well, again we have a very good working
12 relationship with all the transit agencies in California. We
13 believe that a good working relationship should be the first tool
14 and then if that's not successful, then we go to the formal
15 proceeding.

16 MR. KLEJST: Thank you.

17 Mr. Madison?

18 MR. MADISON: The TOC doesn't currently issue any
19 bulletins to WMATA, although we do tend to meet to discuss any
20 broad issues in the transit industry that may be like at our
21 monthly meetings or something. However, under the new amended MOU
22 that was signed in December, we do reserve the right to issue any
23 rules or standards.

24 MR. KLEJST: Thank you.

25 Ms. Galluci?

1 MS. GALLUCI: No, we do not issue formal bulletins.
2 However, we do pass on best practices to the transit agency as
3 well as work with them in our safety discovery meetings to discuss
4 potential solutions for problems and/or other concerns.

5 MR. KLEJST: And does that include any best practices
6 that you may have acquired through whatever source you may acquire
7 them through?

8 MS. GALLUCI: It does, as well as it includes things
9 that we may develop that we believe would assist them in carrying
10 out some of their practices.

11 MR. KLEJST: Thank you.

12 And for the Commonwealth of Massachusetts?

13 MR. CRISTY: Informally, we do anything that we come
14 across that we think will be of interest to the MBTA. We
15 communicate to, primarily to the Director of Safety, whether it be
16 best practices, newsletters, articles, information obtained at
17 various national forums. Anything that we think would be of value
18 to them that would impact how they conduct business, we pass
19 along.

20 MR. KLEJST: Other than the internal review and
21 corresponding results that are required of each rail transit
22 agency under Part 659, do the rail transit agencies in your
23 respective states, are they required to submit to your
24 organizations the results of any other audits, inspections,
25 observations or any type of activity that would be one associated

1 with compliance and compliance audits? Ms. Gregory for
2 California, please.

3 MS. GREGORY: Absolutely. The Public Utilities Code
4 gives us access to any and all records with the exception of a few
5 confidential records such as personal records and that sort of
6 stuff. But any kind of inspection or maintenance records or
7 anything related to that, we have ready access to.

8 MR. KLEJST: And could you use that information to
9 convert to a corrective action that would be an obligation for the
10 rail transit agency to comply with?

11 MS. GREGORY: Yes, we could.

12 MR. KLEJST: For the TOC, please?

13 MR. MADISON: Yes, for the TOC, we do require WMATA to
14 submit any results from any internal audits, any rules, compliance
15 checks or any hazards.

16 MR. KLEJST: Ms. Galluci?

17 MS. GALLUCI: Yes, we do. And in fact, we can go beyond
18 just rail safety oversight since we are the oversight agency for
19 the CTA in general.

20 MR. KLEJST: And Mr. Cristy?

21 MR. CRISTY: Yes, we also participate in internal
22 audits, rules compliance testing. Staff participate in
23 investigations. We're on the MBTA's all-page system, so
24 everything that gets communicated to officials at the MBTA gets
25 communicated to our staff, as well, so we're constantly monitoring

1 that 24/7. Pick up on trends, pick up on areas that we think we
2 should investigate further even if it's just a notification of
3 something minor. If it shows up a number of times, then it's
4 probably worth looking into deeper, so just having access to their
5 all-page system or being party to that is a tremendous asset as an
6 oversight agency.

7 MR. KLEJST: So there's no filtering of any
8 information --

9 MR. CRISTY: None whatsoever. Everything that
10 Brian Dwyer, the Director of Safety, who is sitting behind me,
11 everything that Brian gets, I get.

12 MR. KLEJST: Okay, thank you.

13 MR. CRISTY: In real time.

14 MR. KLEJST: Thank you. Mr. Chairman, that concludes my
15 questioning.

16 CHAIRMAN SUMWALT: Thank you, Mr. Klejst.

17 And Mr. Gura, are you next on the Technical Panel?

18 MR. GURA: Yes, sir. Thank you. I'll direct these
19 questions to Ms. Galluci. Mark, could you please put up Panel 4
20 Exhibit P3-a, please?

21 CHAIRMAN SUMWALT: And for those in the audio visual
22 booth, if you could please turn that microphone up, as well, for
23 Mr. Gura.

24 MR. GURA: Ms. Galluci, as a result of the investigation
25 of the July 11, 2006 derailment of CTA Train 220 in Chicago,

1 Illinois, the National Transportation Safety Board made
2 recommendations to the FTA, to the State of Illinois, to the RTA,
3 the CTA, and the Chicago Transit Board. First of all, can you
4 tell me what RTA's response was to their recommendations and then
5 after that, just kind of give me a brief idea what RTA has
6 initiated any activities to change their oversight program since
7 the July 11th derailment?

8 MS. GALLUCI: The NTSB had two recommendations directly
9 related to the RTA. The first one was to determine if track
10 deficiencies on the CTA's Dearborn subway in the area of the
11 derailment had been adequately repaired. We did work with the CTA
12 to ensure that that was done; it was a corrective action plan
13 item. And then we followed up, during our triennial review
14 process, to ensure also that it had been completed. Second was
15 the recommendation to strengthen our follow-up action on the CTA
16 system safety reviews, meaning the triennial review, to ensure
17 that the CTA corrects all identified safety deficiencies
18 regardless of whether those deficiencies are labeled as findings,
19 observations, or some other term. We changed our procedures in
20 developing the report for the triennial review and we strengthened
21 it. We are more assertive in classifying the findings and
22 requiring corrective plans. We then worked with the CTA to assure
23 that those corrective action plans were followed up upon.

24 As of the 2007 corrective action plan, I believe we have
25 closed out about 85 percent of those items. The second part of

1 your question deals with the changes that were made to the RTA's
2 SSO program as a result of the NTSB recommendations coming out of
3 the July 11th, 2006 derailment. The RTA, prior to the NTSB
4 recommendations, had a program that was not as strong as it could
5 have been. It did not have staff that was dedicated to the rail
6 safety oversight function.

7 It utilized staff that were shared with a number of
8 other functions in the engineering/technology area. Since then,
9 in 2007, my function was created as an oversight function for the
10 agency and rail safety oversight was made a part of that. We
11 reorganized the rail safety oversight function, itself, to provide
12 a dedicated staff. We created a program manager position and that
13 position spends 100 percent of its time on the program. We
14 created a division manager for program compliance where rail
15 safety is housed. That manager spends between 33 and 50 percent
16 of his time on the program. And then myself, I spend about 25 to
17 50 percent of my time on this program. In addition to the
18 internal restructuring and the dedication of staff, we took a more
19 active role in the corrective action plan follow-ups, the
20 quarterly meetings.

21 We created, as I mentioned earlier, a safety discovery
22 program whereby we meet with the transit agency on a quarterly
23 basis to discuss, in general, the kinds of things that might
24 improve or create a safety culture. I think that's probably a
25 good overview of the actions that we've taken.

1 MR. GURA: Thank you. How has the recommendation to the
2 State of Illinois affected the RTA?

3 MS. GALLUCI: The recommendation to the State of
4 Illinois was to evaluate the RTA's effectiveness procedures and
5 authority and take action to ensure that all safety deficiencies
6 identified during the rail transit safety inspections and reviews
7 of the CTA are corrected regardless of whether those deficiencies
8 are labeled as findings, observations, or some other term.

9 Immediately following the publication of this finding,
10 we communicated very closely with the State of Illinois and
11 assured them that our practices were changing and when we
12 completed the triennial review, we did send it to them and
13 identified specifically the improvements in the strength of that
14 document, identifying the findings and ensuring that they were all
15 on a corrective action plan.

16 MR. GURA: Have you heard any response from the State of
17 Illinois?

18 MS. GALLUCI: Unfortunately, there has been a change in
19 administration during this time and so we have not.

20 MR. GURA: Okay. How has the recommendation to the FTA
21 affected the RTA?

22 MS. GALLUCI: I'm sorry, could you repeat that?

23 MR. GURA: How has the recommendation to the FTA
24 affected the RTA?

25 MS. GALLUCI: The FTA recommendations spoke, I think,

1 more broadly to improving the overall state safety program and I
2 think the most important aspect of those recommendations that
3 affected us directly were to participate in safety training, both
4 at the CTA site as well as independently through some FTA
5 trainings.

6 For example, the maintenance oversight workshop that was
7 held at the CTA, that was one of their findings for the CTA to
8 have that training and we participated in that. Out of that
9 particular workshop, the RTA determined that perhaps we would be
10 able to facilitate or assist in improving the methodology for
11 measuring track gauge and width, and so we worked to develop an
12 instrument that they could utilize in order to help them perform
13 those functions.

14 MR. GURA: Thank you. And finally, through the Chicago
15 Transit Board, has anything come down from the Chicago Transit
16 Board to the RTA?

17 MS. GALLUCI: The Chicago Transit Authority had, I
18 believe, six or seven recommendations and it was clear after the
19 recommendations were published that the CTA very closely worked
20 with the RTA in order to assure that all of those recommendations
21 were, in fact, completed and closed. I think the most important
22 one there is that the CTA correct the deficiencies specifically
23 related to the Dearborn subway, which they have done.

24 MR. GURA: Okay. Does the RTA have a staff member on
25 the Chicago Transit Board?

1 MS. GALLUCI: A staff member on the CTA board?

2 MR. GURA: Part of the RTA organization, is there a
3 member on the Chicago Transit Board?

4 MS. GALLUCI: There is not a member of the RTA staff on
5 the CTA board nor is there a member of the -- a staff member of
6 the CTA on the RTA board.

7 MR. GURA: Okay.

8 MS. GALLUCI: That is, however, a change. Prior to
9 legislation in 2008, the chairman of the CTA board was a member of
10 the RTA board.

11 MR. GURA: Okay. But that has changed since?

12 MS. GALLUCI: That has changed as of January 2008 with
13 reforms to the RTA Act.

14 MR. GURA: Okay. The CTA has grade crossings, if I
15 recall. Does the RTA conduct oversight and combined inspections
16 with the CTA at the grade crossings?

17 MS. GALLUCI: As part of our triennial review, we
18 inspect, or include those in our inspections, yes.

19 MR. GURA: Okay. Do you have any interaction with the
20 Illinois Commerce Commission?

21 MS. GALLUCI: No, we do not.

22 MR. GURA: Okay. That's all the questions I have.

23 CHAIRMAN SUMWALT: Thank you.

24 And Rick Narvell?

25 MR. NARVELL: Thank you, Mr. Chairman. I have just two

1 and continuing in the same fashion, Mr. Klejst had -- we'll start
2 with California and move through Illinois and end up with
3 Mr. Cristy of Massachusetts. Does your state or oversight agency
4 require the authorization or permission to enter a rail transit
5 agency's property to conduct observations, audits, or
6 investigations?

7 MS. GREGORY: We, by state statute, have the authority
8 to enter the property 24/7. Now, that being said, it's very
9 important that we also comply with those same rules that we
10 require them to comply with and I certainly would not want my
11 staff on a live track without someone there to accompany them from
12 the agency. But long answer is yes, we can go on the property any
13 time.

14 MR. NARVELL: Okay, thank you.

15 Ms. Galluci?

16 MS. GALLUCI: Yes, we also have the ability to enter the
17 property. We, at the staff level, are certified with their safety
18 training program to do so. Similar to California, however, we do
19 ask them to accompany us on those trips.

20 MR. NARVELL: Okay, thank you.

21 And Mr. Cristy?

22 MR. CRISTY: Yes, we also can access their property, but
23 would respect the fact that we wouldn't do so without being
24 accompanied by a T representative, but yes. And all staff have
25 completed their right-of-way training program.

1 MR. NARVELL: Okay, thank you. And my final question
2 here, again, in the same fashion is do your respective agencies
3 have a requirement for a rail transit agency to have a policy that
4 provides employees with protection from retaliation for the
5 reporting of safety violations to their employers or appropriate
6 government entity? And this would be all under the whistleblower
7 protection.

8 MR. CLARK: I'm not aware that we have a requirement
9 that the agencies themselves have whistleblower protection, but
10 our laws in the State of California do provide whistleblower
11 protection for these folks.

12 MR. NARVELL: Okay, thank you.

13 Ms. Galluci?

14 MS. GALLUCI: We do not have such protection; however,
15 the CTA does maintain an anonymous hotline for the ability for
16 employees to report such instances.

17 MR. NARVELL: And Mr. Cristy?

18 MR. CRISTY: Well, the T uses what we call a Form B
19 process where employees can report hazards anonymously without,
20 you know, having to sign as to who it was and then we review those
21 at the safety department.

22 MR. NARVELL: Okay. Thank you, Mr. Chairman. That's
23 all the questions I have at this time.

24 CHAIRMAN SUMWALT: Thank you, Mr. Narvell.

25 Mr. Watson?

1 MR. WATSON: Yes, I also have two questions and we'll
2 follow the same format as Mr. Narvell and Mr. Klejst, except I'll
3 start at the other end. Mr. Cristy, are there any transit
4 operations in Massachusetts that are exempt from your agency's
5 oversight like people-movers or monorails or whatever?

6 MR. CRISTY: In Massachusetts, we only have one rail
7 fixed skyway system under Part 659. The others are all bus only
8 and they're covered by state statute that provides that we shall
9 be the oversight agency for safety of equipment and operation, so
10 there are no exemptions, per se.

11 MR. WATSON: And you don't have people-movers at the
12 airport or anywhere?

13 MR. CRISTY: Not that -- no, not type of --

14 MR. WATSON: All right, thank you.

15 Ms. Galluci?

16 MS. GALLUCI: We have the authority over the CTA's fixed
17 rail. We do not have the authority in terms of rail safety
18 oversight for their bus system.

19 MR. WATSON: All right, thank you. And people-movers,
20 do you regulate people-movers?

21 MS. GALLUCI: We do not have people-movers.

22 MR. WATSON: All right.

23 Mr. Madison?

24 MR. MADISON: The TOC only has -- is responsible for the
25 oversight of the WMATA Metrorail system and nothing else.

1 MR. WATSON: And the new people-movers out at the Dulles
2 Airport, they don't come within your jurisdiction?

3 MR. MADISON: No, they do not.

4 MR. WATSON: Ms. Gregory?

5 MS. GREGORY: Well, I guess we're the lucky ones. We
6 have all of the above and we exercise jurisdiction on everything.
7 The only thing we do not exercise jurisdiction on are things like
8 ski lifts and trams, the lifts for the winter sports. Everything
9 else falls within our jurisdiction.

10 MR. WATSON: All right, thank you. And then one
11 question that the FRA's going to ask anyway, is there a
12 requirement for the rail transit agencies to report safety
13 critical failure such as red signal violations, in that order, to
14 your agency?

15 MS. GREGORY: Yes, there is. It follows that that would
16 fall within the hazard management program, but we have insisted
17 that those sort of issues be reported to us, as well as in one of
18 our general orders, they have to report any problems with any of
19 the signal systems, any false clears or any failures or anything
20 like that they must immediately report those, as well.

21 MR. WATSON: And that's the timeline I was looking for.
22 Immediately?

23 MS. GREGORY: Yes.

24 MR. WATSON: All right. I believe we have an extensive
25 answer from Mr. Madison, so Ms. Galluci?

1 MS. GALLUCI: I'm sorry, could you repeat the question,
2 please?

3 MR. WATSON: Do you have a process in place that would
4 require the rail transit agencies to report safety critical
5 failures to you in a timely manner, like ATO operation failure or
6 a red signal violation or anything like that?

7 MS. GALLUCI: Yes, we do and it's similar to California.
8 Much of it falls within our hazardous materials management.

9 MR. WATSON: Mr. Cristy?

10 MR. CRISTY: Yes, it's through the hazard management
11 process and also, as I mentioned earlier, we're on their all-page
12 system, so we get instant notification of any type of failure of
13 any type on the system.

14 MR. WATSON: All right, thank you. Those are the
15 questions I have, Mr. Chair.

16 CHAIRMAN SUMWALT: Thank you, Mr. Watson.

17 Any further questions from the Technical Panel?
18 Mr. Narvell.

19 MR. NARVELL: Mr. Madison, I hope you'll accept my
20 apology for my two questions. I missed you. I was focusing on
21 the state here, but I'd like to go back and ask those two
22 questions of you that I asked just a moment ago, if that's okay,
23 and that is do you need WMATA, in your case, permission to enter
24 their property to conduct observations and audits?

25 MR. MADISON: Yes, we do have the ability to go out onto

1 the WMATA right-of-way. We typically, all of our -- members take,
2 and our consultants, as well, take the WMATA right-of-way training
3 class to get the certification first and then if we do need to go
4 out on the right-of-way, we coordinate with the WMATA safety
5 office to have an escort go with us.

6 MR. NARVELL: Okay. And then finally, is there a
7 requirement from the TOC to have whistleblower protection at
8 WMATA?

9 MR. MADISON: I don't think we have a requirement, but I
10 know that in earlier testimony, WMATA did indicate that they do
11 have whistleblower protection for their agency.

12 MR. NARVELL: Okay. Thanks again, Mr. Madison.

13 That's all, Mr. Chairman.

14 CHAIRMAN SUMWALT: Thank you from the Technical Panel.
15 We're now going to go to the parties. We will start with WMATA.

16 CHIEF TABORN: This question is for Ms. Gregory from
17 CPUC and Mr. Cristy. There are 27 state safety oversight agencies
18 across the United States representing 47 rail transit properties
19 and your two states are two of the three that have some form of
20 legislative state laws that will allow you to implement additional
21 penalties in addition to 659 and as such, you probably don't have
22 to worry about resources or training or things of that nature.
23 Does this afford you a better position in carrying out 659
24 regulations?

25 MR. CLARK: If you don't mind, sir, I think I'll take

1 this one. I wouldn't say that we have all of the resources that
2 we need by any stretch of the imagination. It has been noted
3 here, no one has all the resources that they need. We have 12
4 properties, 12 transit agencies, that we oversee the safety of in
5 the State of California.

6 So I think the premise that we have everything that we
7 need, although we have considerable resources, we have 21½ people.
8 We're scheduled under the budget to get two more or three more
9 positions this year in spite of the tremendous problems that we
10 have with the economy in the State of California. So I hope
11 that's responsive to your question.

12 CHIEF TABORN: And one follow-up question. In the 2006
13 Government Accountability Office report entitled "Additional
14 Federal Leadership with Enhanced FTA State Safety Oversight
15 Program", in interviewing a considerable number of those rail
16 transit agencies, 11 of the 24 stated that they had concerns of
17 the educational background in transit safety or security and that
18 one of the recommendations was to ensure that the people who make
19 up the respective transit agencies' oversight have some form of
20 training and so that was revealed in the GAO's audit. Is that
21 something that is concerning to anyone on the panel?

22 MR. CLARK: For California, yes. We would greatly
23 benefit from a deeper training availability to our organization.
24 There are not adequate training resources out there to provide the
25 level of expertise that we strive for amongst our staff.

1 MS. GREGORY: If I might add just a bit to that, though,
2 in recognition of the wonderful staff that I do have, I have 11
3 professional engineers, one of those whose a doctorate from
4 M.I.T., several of those who have dual master's degrees. I have
5 two supervising engineers. I have a program and project
6 supervisor position. I also have a specialist's position. The
7 newest addition to the branch, and where the new positions will go
8 this year, are the inspectors and they all come from a very robust
9 railroad background.

10 The track inspector has 37 years as a track foreman.
11 The signal inspector, signal and train control inspector, has a
12 quite lengthy resume of railroad service and rail transit service.
13 He's a wonderful addition to our team. And we have an equipment
14 inspector who is out every day looking at the equipment and the
15 actual maintenance and the proactive things that they're doing to
16 make sure that the vehicles are maintained correctly. He also
17 comes from a railroad background. So in answer to your question,
18 there's always more training and we're always seeking that.
19 However, it is a pretty robust requirement to have one of these
20 jobs.

21 CHIEF TABORN: And a final question, if I may. In
22 recognizing the additional sort of legislation support to enforce
23 659, in the transit agencies in your respective areas, do you
24 still have some difficulties or do the transit agencies have
25 difficulties carrying out 659, the implementation of 659?

1 MS. GREGORY: Was that for me again, Chief?

2 CHIEF TABORN: The carrying out of the transit agencies
3 in your area and in Brian's area, is there still some level of
4 difficulty carrying out the aspects of 659?

5 MS. GREGORY: 659 requires a tremendous amount of
6 administrative work. That being said, we fulfill that mandate.
7 We are in compliance. But it does require a tremendous amount of
8 administrative work simply because of the twelve agencies that we
9 regulate and that twelve, or seven of those, do receive FTA funds
10 so it is mandated through 659 that they are regulated. The other
11 five do not and then there are some smaller properties that we
12 also look at but we don't do the full 659 program with those
13 properties. So it is a lot of paperwork.

14 CHIEF TABORN: I think I was speaking more so about the
15 rail transit agencies implementing 659.

16 MS. GREGORY: Oh, forgive me. They do a good job. It's
17 been a steep learning curve. When the final rule was implemented
18 in 2006 it was quite different for them. It took a lot of
19 resources to get the System Safety Program Plans written, the
20 system security plans written, all the checklists, but at this
21 point in time, they rise to the occasion and they're doing a good
22 job.

23 MR. CRISTY: Well, Chief, you know, at times the T does
24 struggle with certain aspects, however particular. It comes to
25 corrective action plans and hazard management and it's a constant

1 education process. I mean, we provide -- that's an instance where
2 we provide training to the authority, where recently we put on
3 one-hour sessions with the MBTA's upper management, reviewing all
4 the aspects of 659 and specifically, their SSPP.

5 We're probably going to go and drill down the mid-level
6 managers next, but that was an initiative that the safety director
7 and I put together and the general manager blessed and required
8 that upper management attend these two separate one-hour sessions
9 to educate everyone on the importance of Part 659 and the SSPP.
10 And there's a lot of times folks will say, you know, why do I have
11 to do this, what's the meaning of this, so -- I mean, training's
12 important for my staff and for myself, but it's also important for
13 the authority and its staff.

14 Just keep in mind the Massachusetts PUC is an
15 administrative party. We're not able to levy fines or impose
16 fines upon the authority for non-compliance, so in terms of
17 budget, my division is a separate line item in the state budget,
18 so it's subject to the, you know, discretion of the legislature as
19 to whether it will be -- go up, go down, or remain the same, so
20 budget issues, you know, are a concern of ours and that's one of
21 the things that interest us in the White House, in the
22 administration's proposal, was the fact that it would fund states,
23 provide funding to states, which we've never had before and
24 because of the fact that it is subject to legislative discretion.

25 CHIEF TABORN: Thanks very much. That's all, sir.

1 CHAIRMAN SUMWALT: Thank you, Chief.

2 And now D.C. Fire and EMS Department?

3 CHIEF SCHULTZ: No questions. Thank you, sir.

4 CHAIRMAN SUMWALT: Thank you, sir.

5 ATU?

6 MS. JETER: Since all of you are very -- it seems to be
7 very active, my question is for a transit oversight committee or a
8 panel, do you believe that that oversight committee should be
9 proactive instead of reactive?

10 MR. CLARK: Absolutely proactive. We believe very
11 deeply our organization that if you don't have a plan, then you --
12 if you've failed a plan, then you plan to fail. And so we think
13 that the only way that safety really becomes ingrained in the
14 culture of the organization is that the oversight agency and the
15 transit agency have to work together very closely, recognizing, of
16 course, that the oversight agency has the enforcement authority to
17 take -- to either levy fines or to stop operations.

18 MR. CRISTY: I would agree proactive is essential and it
19 is a partnership, and the stronger the authority is in terms of
20 safety and promoting safety culture from the top down, meaning
21 beginning with the general manager all the way down to the
22 customer service advisors. But we also have to be aware and
23 remind ourselves that we're the oversight; we don't run a transit
24 authority, we oversee it, so it's a delicate balance but proactive
25 is certainly much more favorable to being reactive.

1 MS. JETER: Thank you.

2 CHAIRMAN SUMWALT: Thank you, Ms. Jeter.

3 And Alstom?

4 MR. ILLENBERG: No questions.

5 CHAIRMAN SUMWALT: Thank you.

6 Ansaldo?

7 MR. PASCOE: No questions.

8 CHAIRMAN SUMWALT: Thank you.

9 FRA?

10 MR. McFARLIN: Thank you. I have a follow-up to the
11 reporting of the signal failures of your four state oversight
12 agencies represented. Three, sounds to me like have direct
13 reporting requirements and of course, the TOC receives the
14 information frequently through their cooperative efforts and
15 meetings and whatnot. What I would ask is if you each have any
16 type of investigative response to those reports and do you track
17 and/or analyze their occurrences for such as specific significant
18 problems or potential trends, that sort of thing? So starting
19 with Ms. Gregory.

20 MS. GREGORY: My short answer is yes, we do. For
21 example, a good illustration would be after this accident happened
22 here in Washington, D.C. at Fort Totten, my staff went out and
23 they interviewed all the signal departments that have any sort of
24 automatic train control because we do have three properties that
25 have certain amounts of automatic train control; two of those

1 properties have very similar equipment. So they did a complete
2 survey of that equipment, inspected the equipment, and made a
3 thorough assessment; you know, we wanted to make sure that the
4 same thing couldn't happen on one of those properties. And the
5 same thing would hold true with any other kind of signal failure.
6 Does that answer your question?

7 MR. McFARLIN: Yes. With the additional request, if you
8 don't mind, that was certainly a very high-profile event and
9 excellent follow-up on your part. Have you done any particular
10 effort with regard to an event that was reported directly to you
11 by one of your transit agencies?

12 MS. GREGORY: As far as a signal failure, my term with
13 the Public Utilities Commission, I have not had one of those to
14 date. Hope I don't have one. I am well aware that false clears
15 and signals do malfunction occasionally, but in my four years
16 there I've not witnessed one yet.

17 MR. CLARK: I can tell you that other railroad
18 properties have had red signal violations and we absolutely roll
19 in an investigative team every time.

20 MS. GREGORY: You're not speaking to red signal
21 violations, are you?

22 MR. McFARLIN: No, I was not.

23 MS. GREGORY: Okay. Because we definitely inspect
24 those.

25 MR. McFARLIN: Ms. Galluci?

1 MS. GALLUCI: Yes, we do and I will further say that
2 prior to our 2006 derailment incident, we really did not monitor
3 the issues as well as we do now. We're beginning to now,
4 therefore, have more trend available data and we'll continue to do
5 so.

6 MR. McFARLIN: Thank you.

7 And Mr. Cristy?

8 MR. CRISTY: The way that issue is handled in
9 Massachusetts is that the T, through the safety department, would
10 convene a technical committee. We have on our staff an electrical
11 engineer and a mechanical engineer and a transit inspector. They
12 would participate in the technical committee. But for that type
13 of signal train control issue, we often reach out to our signal
14 and train control specialist, who is a consultant to us and a
15 former FRA signal and train control specialist, to assist and to
16 participate in this task force, if you will, that the authority
17 would put together because of the technical nature of the
18 potential failure or failure.

19 MR. McFARLIN: Thank you.

20 Mr. Madison, you're free to add whatever you wish to
21 that question.

22 MR. MADISON: Okay. We actually do now require WMATA to
23 report any signal problems to the TOC and we do require corrective
24 action plans, if necessary.

25 MR. McFARLIN: Okay. And do you do any investigation

1 related to any event reported?

2 MR. MADISON: If we feel that there's a need for an
3 investigation, then we would deputize WMATA to conduct an
4 investigation and then participate accordingly.

5 MR. McFARLIN: Thank you. That's all I have.

6 CHAIRMAN SUMWALT: Thank you, Mr. McFarlin.

7 The FTA now.

8 MR. FLANIGON: Thank you. I'll ask one question in that
9 -- Mr. Klejst's format, sort of one question for each one of the
10 panel, starting on my left, your right. You were asked a question
11 or actually a series of questions earlier, I believe, by
12 Mr. Klejst on the degree to which you had authority and abilities
13 that extended beyond what is promulgated in C.F.R. 659, state
14 oversight agency. And I wonder if you could just answer the
15 question, did you have that level of authority before Part 659 was
16 enacted? Starting with California.

17 MR. CLARK: Yes, we have always had that authority. As
18 a matter of fact, Part 659 is, in fact, largely based upon
19 California's existing regulations at the time. And so the Public
20 Utilities Commission, the Public Utilities Code, gives us powers
21 above and beyond that which is incumbent upon us as a state safety
22 oversight agency under Part 659.

23 MR. MADISON: I guess for the TOC, I mean, we existed,
24 you know -- we didn't exist before 659, so --

25 MR. FLANIGON: Didn't exist before 659, right? Thank

1 you.

2 MS. GALLUCI: The RTA existed prior to 659, but the RTA
3 Act was amended to include 659 in order to give us the authority
4 for rail safety oversight.

5 MR. CRISTY: The department was designated the MBTA's
6 transit oversight agency in 1963 through the MBTA's enabling
7 legislation, so we predate Part 659, as well.

8 MR. FLANIGON: Okay, thank you. And I'll ask another
9 question of our California representatives. If I'm not mistaken,
10 you've had the opportunity to participate in some FTA sponsored
11 annual meetings of all the state oversight agencies and the some
12 of the transit agencies, as well. From that interaction with your
13 peers, would you say that your level of staffing and independent
14 authority to enforce Part 659 is the exception or the rule?

15 MS. GREGORY: I'm sad to say that mine's the exception.

16 MR. FLANIGON: Great, thank you. And I have one more
17 question that I'd like to go down the panel, start with Mr. Cristy
18 this time. And since you did bring up the Obama Administration's
19 legislative proposal for the Public Transportation Safety Act that
20 I understand has now been actually introduced in the Senate, at
21 least, in your familiarity with that, which would provide some
22 additional authority to states that would participate in such a
23 program and the ability to enforce some national standards, some
24 resources to the states, the ability to develop some additional
25 technical expertise and also, since whistle blowing came up, that

1 does include a whistleblower protection clause; would you see that
2 as a valuable tool to improve your ability to oversee safety in
3 rail transit in your state?

4 MR. CRISTY: Yes. We definitely support the initiative.
5 As you know, I testified before the Senate in support in December,
6 I believe it was, December 10th, in support of the White House
7 Administration's position. We feel it's time has come. It would
8 cause the FTA to become a partner in oversight as opposed to an
9 advisor. So we absolutely think it's necessary.

10 MR. FLANIGON: Okay. Ms. Galluci?

11 MS. GALLUCI: Our current relationship with the CTA, as
12 it stands, appears to work for us with regard to the partnership
13 and the cooperation. However, to the extent that any kind of
14 changes to 659 would improve our ability to perform the function,
15 we would support that.

16 MR. MADISON: Yes, we would support anything that could
17 increase -- you know, provide additional authority and resources
18 and technical expertise for the TOC and state safety oversight, in
19 general.

20 MR. CLARK: And as you know, I testified before Congress
21 on this issue, also. The California Public Utilities Commission
22 is in strong support of the Obama Administration's legislation as
23 long as we're not preempted in the same way that we're preempted
24 by the Federal Railroad Administration. Any sort of preemption we
25 see as being a huge problem for us. We are innovative, we think

1 we're on the ground floor, able to -- every rail transit agency in
2 the state of California and as I understand, across the nation, is
3 unique. Someone's testified if you've seen all rail transit
4 agency, you've seen one rail transit agency. And so we need to be
5 able to respond individually to each one of the different transit
6 agencies, so preemption is a deal killer for us. Thank you.

7 MR. FLANIGON: Okay, thank you. And by the way, there
8 is -- in the Obama Administration proposal, there is a way to
9 address -- or it does not preempt states from implementing as good
10 or better local legislation. That's all I have.

11 CHAIRMAN SUMWALT: Thank you, Mr. Flanigon.

12 Now to TOC.

13 UNIDENTIFIED SPEAKER: We have no questions, thank you.

14 CHAIRMAN SUMWALT: Thank you. Are there any follow-up
15 questions from any of the parties at this time? I see one and
16 that would be from the ATU.

17 MS. JETER: I'm interested, I've heard the term
18 whistleblower protection used several times and specifically to
19 Mr. Madison. Are you familiar with the language? I know you
20 testified earlier that WMATA had said that the language was there.
21 Are you familiar with the language?

22 MR. MADISON: I am not familiar with the language.

23 MS. JETER: Okay. Would you be opposed to the
24 strengthening of the language to specifically go to safety or
25 employees reporting safety issues?

1 MR. MADISON: So would you mean that if an employee had
2 an issue that they would go directly to the safety office in some
3 form?

4 MS. JETER: Well, they would have whistleblower
5 protection if it was -- specifically if it was a safety issue or
6 more specifically, enhancing WMATA's whistle blowing protection
7 language to include safety.

8 MR. MADISON: Yes. I mean, I think if there's any way
9 that can improve the safety of the WMATA Metrorail system, you
10 know, if that means improving the whistleblower language to mean
11 that an employee could report a safety issue and not, you know,
12 suffer any kind of repercussions for that, yes, we would support
13 that.

14 MS. JETER: Okay, thank you.

15 CHAIRMAN SUMWALT: Thank you. Any further follow-up
16 questions from any of the parties?

17 (No response.)

18 CHAIRMAN SUMWALT: Seeing none. Technical Panel, any
19 follow-ups?

20 (No response.)

21 CHAIRMAN SUMWALT: Okay, we now go to the Board of
22 Inquiry. Mr. Ritter?

23 MR. RITTER: I had a couple of questions about the
24 resource issues. I'm not sure, Mr. Cristy, if -- I might not have
25 heard. How many employees does Massachusetts PUC have on staff?

1 MR. CRISTY: Specific to this program, there are two
2 transit engineers, one transit inspector. I probably devote
3 about 50 percent of my time to the program and my assistant
4 director also probably commits about 50 percent of his time to
5 this program.

6 MR. RITTER: Would you say that the triennial audits, I
7 guess, use a significant amount of your resources when you -- when
8 they're, you know, every three years?

9 MR. CRISTY: We elect to conduct the safety side of that
10 audit in-house, do it ourselves. The security portion of it, we
11 have historically contracted out, most recently using actually TSA
12 for the security portion, but we have always historically, being
13 safety regulators, conducted the safety side of that triennial
14 audit. But I don't find that, in and of itself, terribly
15 burdensome.

16 MR. RITTER: Okay. So why would you, I guess, contract
17 out to security side, just because that's less in your staff's
18 area of expertise?

19 MR. CRISTY: That's correct. The MBTA has its own
20 dedicated police force and we're not law enforcement in our
21 background, so we're not in law enforcement.

22 MR. RITTER: Okay. I guess I wanted to explore this a
23 little bit with RTA, also. Ms. Galluci, the -- we heard about
24 your staffing level as far as resources for the triennial audits.
25 Do you use contractors and what's that process?

1 MS. GALLUCI: For the triennial review, we do use
2 contractors. We have a contract with TRA Associates. We have had
3 that contract for the past three years; we have just renewed it.
4 In addition to the triennial review where we rely upon TRA for
5 their expertise, we also have monies in the contract for
6 additional instances where expertise may be required because of an
7 accident or some other follow up or investigation, et cetera.
8 It's important to note, however, that with our program the RTA
9 staff is in charge of the triennial review, they manage it. They
10 use TRA for their expertise where they bring in sometimes up to a
11 dozen different folks with different levels and varied
12 backgrounds.

13 MR. RITTER: Okay. So would you say, as far as the
14 preparation of the report, is the majority of the work done by
15 your staff or is it overseen by your staff?

16 MS. GALLUCI: It is overseen by our staff. The majority
17 of the report, itself, is prepared by the consultant and then we
18 review it, we edit, and it may go back and forth a few times and
19 then it is complete.

20 MR. RITTER: Did you use TRA -- I guess you use them for
21 other assistance like in the issue with the track deficiencies on
22 the 2006 accident?

23 MS. GALLUCI: The 2006 accident was referenced in
24 the 2004 (sic) triennial review report. TRA was not the prime
25 contractor in that. Bytel was, I believe. TRA was a

1 subcontractor. However, as part of the follow-up actions related
2 to the NTSB recommendations both for the RTA and the CTA, we have
3 utilized TRA in those efforts.

4 MR. RITTER: I assume, if I just quickly would go to
5 California, is -- do you use contractors when you do your
6 triennial reports?

7 MR. CLARK: No. We do those with our own staff. As I
8 testified earlier, we have about 21.5 people.

9 MR. RITTER: Right. Yeah, you have quite a staff, so
10 you have enough resources to get those for each of the 12
11 properties?

12 MR. CLARK: No, it's -- people are working full-time all
13 the time, there's no doubt about it. And we have a mix of people,
14 also. It's not just engineers. We also have the track inspectors
15 and motor power and equipment inspectors. We have an analyst. I
16 also have a deputy director in charge of rail safety who's not
17 here today.

18 MR. RITTER: Yeah, I guess didn't mean to minimize the
19 effort, but since -- 21 is a large number, relatively speaking,
20 but since you had twelve agencies, you're still able to get it
21 done with your own staff, I take it?

22 MR. CLARK: Yes.

23 MR. RITTER: Ritter.

24 MS. GREGORY: And if I might add, in our last analysis
25 that went with our budget proposal this year, we calculate that we

1 use three PYs a year on triennial audits alone. You know, we have
2 to do four a year to keep current.

3 MR. RITTER: Okay, thank you. I don't have any other
4 questions.

5 CHAIRMAN SUMWALT: And Dr. Kolly?

6 (No response.)

7 CHAIRMAN SUMWALT: Thank you. Mr. Dobranetski.

8 HEARING OFFICER DOBRANETSKI: Just one question, to give
9 you more time to answer it. Just expanding on the question that
10 Mr. Ritter asked, for normal oversight and inspection duties that
11 you have, is it primarily done by in-house or consultants? And
12 start with California.

13 MR. CLARK: It's in-house. Everything is in-house.
14 It's the very rare occasion that we use a consultant unless it's
15 really highly specialized, like we're doing an automatic -- a
16 positive train control for freight trains and passenger trains and
17 we have a consultant there, but it's highly unusual that we have
18 consultants.

19 HEARING OFFICER DOBRANETSKI: Thank you.

20 TOC?

21 MR. MADISON: We do use consultants or a consultant.

22 HEARING OFFICER DOBRANETSKI: Thank you.

23 RTA?

24 MS. GALLUCI: The normal day-to-day activities
25 associated with the program are done in house.

1 HEARING OFFICER DOBRANETSKI: Thank you.

2 Massachusetts?

3 MR. CRISTY: In-house, as well.

4 HEARING OFFICER DOBRANETSKI: Thank you. I have no
5 further questions, Mr. Chairman.

6 CHAIRMAN SUMWALT: Thank you, Mr. Dobranetski.

7 Before lunch, I talked about autonomy and independence
8 of the oversight agencies and so I want to ask, I'll go down the
9 bank here and ask, do you all, in any of your operations, have a
10 situation where you're overseeing an agency and yet those people
11 are, in some form or fashion, over you in other capacities? And I
12 think we heard from Illinois there that up until last year there
13 was a situation where CTA had somebody on the RTA, but let's just
14 start with California and ask if you have any such situations.

15 MR. CLARK: We do not have that situation. Our
16 commissioners are all appointed by the governor and they're
17 confirmed by the Senate. I report directly -- as director of
18 safety, I report directly to the executive director, who reports
19 directly to the president of the commission. And so there are no
20 conflicts.

21 CHAIRMAN SUMWALT: Thank you. And the executive
22 director of the commission reports to the governor?

23 MR. CLARK: No, he reports directly to the president of
24 the commission.

25 CHAIRMAN SUMWALT: The president of the commission. And

1 then the commission is completely independent?

2 MR. CLARK: It is. It's constitutionally derived. It
3 was established in 1911, so we're in our 100th year of doing this
4 business.

5 CHAIRMAN SUMWALT: Excellent. Thank you very much.
6 Illinois?

7 MS. GALLUCI: As I mentioned earlier, since the change
8 to the RTA Act in January of 2008, we no longer have such a
9 situation.

10 CHAIRMAN SUMWALT: No longer have that, thank you.
11 And Massachusetts?

12 MR. CRISTY: Independent commission, as well. I report
13 directly to the chairman and the chairman reports to the Secretary
14 of Energy and Environment. The MBTA falls under the Massachusetts
15 Department of Transportation, a totally separate agency, and we've
16 been around since 1868.

17 CHAIRMAN SUMWALT: Thank you so much for a very good
18 panel. The panel, when I throw the gavel down, will be excused.
19 I want to thank you for your participation, traveling all this
20 distance to participate, to help us understand -- have a better
21 understanding of how various state safety oversight agencies work
22 across the country.

23 We will reconvene at 3:35. I release the witnesses.

24 (Witnesses excused.)

25 CHAIRMAN SUMWALT: We'll reconvene at 3:35. Thank you.

1 (Off the record.)

2 (On the record.)

3 CHAIRMAN SUMWALT: And we are back in session.

4 Mr. Dobranetski, are you ready to qualify and swear in
5 the witnesses for the next panel?

6 HEARING OFFICER DOBRANETSKI: Yes, sir, Mr. Chairman.
7 We're ready for Witness Panel 5. Ladies and gentlemen, please
8 raise your right hands.

9 (Witnesses sworn.)

10 HEARING OFFICER DOBRANETSKI: Ms. Waters, for the
11 record, would you please state your full name, current employer,
12 title, and your company's address?

13 MS. WATERS: Katherine Waters. I am the Vice President,
14 Member Services, with the American Public Transportation
15 Association. Our office is at 1666 K Street, Northwest,
16 Washington, D.C.

17 HEARING OFFICER DOBRANETSKI: And how long have you been
18 in your current position?

19 MS. WATERS: Since November of 2007.

20 HEARING OFFICER DOBRANETSKI: And your duties and
21 responsibilities?

22 MS. WATERS: My responsibilities as Vice President for
23 Member Services is to manage and direct a diverse portfolio of
24 APTA's member services, but includes safety, security, technical
25 services, our audit programs, our peer reviews, emergency

1 preparedness program, international programs, and a vast -- or I
2 forgot -- and particularly, our standards development program.

3 HEARING OFFICER DOBRANETSKI: Could you also provide a
4 brief description of the positions you've held prior to coming to
5 APTA?

6 MS. WATERS: Most recently, before APTA, I was the
7 Senior Deputy Administrator for Transit Operations with the
8 Maryland Transit Administration, in that capacity from February
9 of 2007 until assuming my position with APTA. Prior to that, I
10 served as the Vice President for Commuter Rail and Railroad
11 Management with the Dallas Area Rapid Transit for about five
12 years. And prior to that, I held numerous positions with the
13 Maryland Transit Administration responsible for the train service,
14 including the position of Director, which at that time, was the
15 Manager and Chief Operating Officer.

16 Prior to that, I served in a number of capacities,
17 starting, I believe, in 1980 with the Maryland State Railroad
18 Administration, which was then one of the modal administrations of
19 the Maryland Department of Transportation. Began as a freight
20 rail planner and progressed into various positions of
21 responsibility.

22 That agency was merged with the Maryland Transit
23 Administration in 1991. Prior to that, my beginning professional
24 career, after completing graduate school, was as a community
25 planner serving with the Maryland State Department of State

1 Planning, responsible for comprehensive zoning and planning
2 assistance to counties and municipalities within the state of
3 Maryland.

4 HEARING OFFICER DOBRANETSKI: Thank you, Ms. Waters.
5 Mr. Grizard, could you state your full name, current
6 employer, title, and your company address, please?

7 MR. GRIZARD: Yes, sir. William Grizard. I am Director
8 of Safety Programs for the American Public Transportation
9 Association, Washington, D.C. Same address. And I've been there
10 for eight years. And scope of duties and responsibilities are to
11 administer safety management programs that we have for the
12 industry, which includes bus, rail, commuter rail programs. And
13 prior work history, 12 years in the transit industry with
14 Sacramento Regional Transit, Bus and Light Rail Operation.

15 I have five years with the Bureau of Explosives, AAR;
16 another twelve years on freight railroads, including Union
17 Pacific, Missouri Pacific, Southern Pacific, Northwestern Pacific.
18 And I think that probably covers all of the prior work history
19 that I have.

20 HEARING OFFICER DOBRANETSKI: Thank you, Mr. Grizard.

21 Mr. Pritchard, your full name, current employer, title,
22 and your agency's address.

23 MR. PRITCHARD: Good afternoon. I am Edward W.
24 Pritchard. I'm the Director of Safety Assurance and Compliance of
25 the U.S. Department of Transportation's Federal Railroad

1 Administration. My address is 1200 New Jersey Avenue, Southeast,
2 Washington, D.C. 20590. I'm sorry, what was the other, Ed?

3 HEARING OFFICER DOBRANETSKI: That's good. And how long
4 have you been in your current position?

5 MR. PRITCHARD: Since 2002.

6 HEARING OFFICER DOBRANETSKI: And your current duties
7 and responsibilities?

8 MR. PRITCHARD: Current duties and responsibilities.
9 I'm responsible for developing rules and regulations on rail
10 safety in seven disciplines of rail safety, which are track,
11 signal, operating practices, hazardous materials, motor power and
12 equipment, industrial hygienist, and a new division we put on last
13 year, the Passenger Rail Division. Also issuing instructions to
14 our 400 plus field inspectors, plus approximately 170 state
15 inspectors that we have on the implementation of those rules.

16 Also issuing technical bulletins and safety advisories,
17 when necessary, to the railroad community and the general public.
18 We also maintain a general manual and also discipline specific
19 manuals for each of those disciplines that I mentioned. And we
20 also evaluate data on our inspections that we made and train
21 accidents, looking for trends and for noncompliance areas within
22 the railroad industry.

23 HEARING OFFICER DOBRANETSKI: How long have you been
24 employed by the FRA?

25 MR. PRITCHARD: Since 1970.

1 HEARING OFFICER DOBRANETSKI: And do you have a brief
2 description of what you've done prior to coming to the FRA?

3 MR. PRITCHARD: Prior to my promotion, I was the Senior
4 Advisor to the Association Administrator for Safety; also, the
5 District Chief for the Hazardous Materials Division. I also
6 worked as Acting District Chief or Staff Director for -- that's
7 Acting Staff Director for the Motor Power and Equipment Division,
8 the OP division, the signal division. I had it all at different
9 times during the period of time. And I started with FRA as a
10 field inspector in hazardous materials and became a district chief
11 in Chicago before my promotion in '83 to Washington, D.C.

12 HEARING OFFICER DOBRANETSKI: Thank you, Mr. Pritchard.

13 Mr. Leeds, would you state your full name, current
14 employer, title, and agency's address?

15 MR. LEEDS: I am John Leeds, Jr. I'm Director of Office
16 of Safety Analysis at the Federal Railroad Administration.
17 It's 1200 New Jersey Avenue, Southwest, Washington, D.C. And I've
18 been Director of Office of Safety Analysis since 1995. Prior to
19 that, I was the Chief of Planning and Evaluation at the FRA since
20 1980. Before that, the FRA, when I started in '79, I was an
21 economist. And before that, in '75, I worked for a civil
22 aeronautics board as an economist. And before that, I finished
23 graduate school and before that, I worked for Ford Motor Company.

24 HEARING OFFICER DOBRANETSKI: Thank you. And your
25 current duties and responsibilities?

1 MR. LEEDS: Current duties and responsibilities, I have
2 crossing and grade -- rail/highway grade crossing and trespass
3 prevention program, planning and evaluation, Resource Allocation
4 Division knowledge, Management Division, Risk Reduction Program
5 Division and Safety Improvement and Development Division, as well
6 as the State Participation Program.

7 HEARING OFFICER DOBRANETSKI: And how long have you been
8 employed by the Federal Railroad Administration?

9 MR. LEEDS: Since 1979.

10 HEARING OFFICER DOBRANETSKI: Okay. Thank you,
11 Mr. Leeds.

12 Mr. Flanigon, would you state your full name, current
13 employer, title, and your agency's address?

14 MR. FLANIGON: Yes. My name is Michael T. Flanigon and
15 I work for the Federal Transit Administration, which is one of the
16 administrations in the Department of Transportation. I work
17 at 1200 New Jersey Avenue, Southeast in Washington, D.C.

18 HEARING OFFICER DOBRANETSKI: And how long have you been
19 in your current position?

20 MR. FLANIGON: I've been in my current position just
21 under a year and a half.

22 HEARING OFFICER DOBRANETSKI: And your current duties
23 and responsibilities?

24 MR. FLANIGON: I'm the director of the FTA's Office of
25 Safety and Security. In that capacity, I oversee the day-to-day

1 operations of that office and the programs therein. That includes
2 the state oversight program, from the FTA perspective, as well as
3 drug/alcohol testing and a number of other safety programs. Our
4 involvement in transit are limited, involved in transit security,
5 as well as our involvement in the Department of Transportation's
6 emergency coordination and response functions.

7 HEARING OFFICER DOBRANETSKI: And how long have you been
8 employed by the Federal Transit Administration?

9 MR. FLANIGON: I've been employed by the Federal Transit
10 Administration since 2007.

11 HEARING OFFICER DOBRANETSKI: Okay. Could you also
12 provide a brief description of the positions you've held prior to
13 going to the Federal Transit Administration?

14 MR. FLANIGON: Yes, sir. I really began my
15 transportation career working for the Southern Pacific Railroad
16 where I held a number of operating positions, including locomotive
17 engineer, and really began an interest in safety management area
18 as the union safety steward when I worked for the railroad. I
19 left the railroad and I worked for the California Public Utilities
20 Commission in their rail transit safety oversight program and then
21 I worked for a couple of transit agencies in both maintenance and
22 safety positions. In 2001, I came to work for the National
23 Transportation Safety Board as a rail accident investigator.

24 HEARING OFFICER DOBRANETSKI: Thank you, Mr. Flanigon.

25 Mr. Chairman, the witnesses are qualified and we can

1 turn the questioning over to Mr. Klejst.

2 CHAIRMAN SUMWALT: Thank you, Mr. Dobranetski.

3 And Mr. Klejst?

4 MR. KLEJST: Thank you, Mr. Chairman.

5 Mr. Pritchard, does the Federal Railroad Administration
6 have any oversight of rail transit properties that ordinarily
7 would be governed by Federal Transit Administration oversight?

8 MR. PRITCHARD: No, sir.

9 MR. KLEJST: Are there any conditions where the Federal
10 Railroad Administration exercises guidance, direction, or limited
11 oversight in the cases of joint operations?

12 MR. PRITCHARD: You're talking about mass transit?

13 MR. KLEJST: That is correct.

14 MR. PRITCHARD: No, we don't.

15 MR. KLEJST: Does the Federal Railroad Administration
16 have the authority to develop and implement regulations with
17 regard to safety?

18 MR. PRITCHARD: For mass transit?

19 MR. KLEJST: For railroad properties.

20 MR. PRITCHARD: Yes. For railroads, we do. Mass
21 transit is excluded.

22 MR. KLEJST: And you mentioned in your introductory
23 comment some of the areas that you have responsibility for. This
24 question is phrased a little different. Does the Federal Railroad
25 Administration have regulations that govern freight railroads,

1 commuter railroads, and inter-city railroads dealing with
2 operating practices?

3 MR. PRITCHARD: Yes.

4 MR. KLEJST: Signal and train control systems?

5 MR. PRITCHARD: Yes, sir.

6 MR. KLEJST: Equipment, example motor power and
7 inspection standards?

8 MR. PRITCHARD: Yes, sir.

9 MR. KLEJST: Track safety standards?

10 MR. PRITCHARD: Yes, sir.

11 MR. KLEJST: Equipment crashworthiness standards?

12 MR. PRITCHARD: Yes, sir.

13 MR. KLEJST: Standards for locomotive event and
14 quarters?

15 MR. PRITCHARD: Yes, sir.

16 MR. KLEJST: Passenger train emergency preparedness?

17 MR. PRITCHARD: Yes, sir.

18 MR. KLEJST: And hours of service for operating
19 employees?

20 MR. PRITCHARD: Yes, sir.

21 MR. KLEJST: Does the Federal Railroad Administration
22 conduct routine inspections or audits of railroads for compliance
23 with the FRA's regulations?

24 MR. PRITCHARD: Yes, they do.

25 MR. KLEJST: And could you briefly describe to us how

1 that process takes place?

2 MR. PRITCHARD: We have approximately -- well, there's
3 about 400 inspectors out on the field in five of those disciplines
4 that I mentioned: track, operating practices, motor power and
5 equipment, hazardous materials, and signal and train control. Our
6 inspectors -- we don't perform the inspections for the railroad.
7 We do a sampling to see if the carrier is in compliance with those
8 disciplines.

9 MR. KLEJST: So these are compliance audits?

10 MR. PRITCHARD: These are compliance audits. We go out
11 and do it 24/7 and weeks included, to check for compliance of the
12 railroads.

13 MR. KLEJST: And do you use all -- you mentioned 400
14 inspectors. Do you use all internal staff to perform this
15 function or do you use the services of any outside contractors?

16 MR. PRITCHARD: We do not use any outside contractors.

17 MR. KLEJST: And of the inspectors that are performing
18 the functions you just described, are these -- could you briefly
19 describe the technical requirements to become an inspector, some
20 of the technical qualifications?

21 MR. PRITCHARD: For our inspectors?

22 MR. KLEJST: Yes.

23 MR. PRITCHARD: The technical qualifications, you have
24 to have a minimum requirement of six years railroad experience or
25 equivalent type of training before you qualify for one of our

1 positions as an inspector.

2 MR. KLEJST: So an individual that would be performing
3 signal and train control inspection would have actual technical
4 experience in that area, as well as operating practices, again
5 corresponding experience in that area?

6 MR. PRITCHARD: Yes, for all those. And I'd like to
7 back up on one question.

8 MR. KLEJST: Yes, sir.

9 MR. PRITCHARD: You asked about contractors. We do have
10 the state program. I don't consider them "contractor." I don't
11 know if you're referring to them as contractors.

12 MR. KLEJST: No. But actually, I do have a question
13 that focuses on that area that I'll get to --

14 MR. PRITCHARD: Okay.

15 MR. KLEJST: -- as the questions develop, but thank you
16 for mentioning that. Does the FRA need the railroads'
17 authorization or permission to enter a property to conduct the
18 audits and inspections that you described earlier?

19 MR. PRITCHARD: No, they do not. However, there are
20 certain classes of disciplines like track and signal and train
21 control where in order to gain access to their property safely, we
22 need to give notification to the carrier that we're coming on the
23 property so that they have personnel with our people for safety
24 reasons.

25 MR. KLEJST: Can any of those carriers say no, I don't

1 want you here today?

2 MR. PRITCHARD: They've never done that.

3 MR. KLEJST: Okay, thank you. Does the Federal Railroad
4 Administration investigate significant railroad accidents and
5 injuries to employees?

6 MR. PRITCHARD: Yes, we do.

7 MR. KLEJST: And does the Federal Railroad
8 Administration have a requirement for railroads to report any
9 significant safety issues such as grade crossing activation
10 failures or failures of their signal systems?

11 MR. PRITCHARD: Yes. Yes, it's required and we follow
12 up on all of those that are reported to us and we investigate all
13 of them.

14 MR. KLEJST: And what action can be taken by the Federal
15 Railroad Administration if a railroad is found to be in
16 noncompliance with any one of the Federal Railroad
17 Administration's regulations dealing with safety that we just
18 described earlier?

19 MR. PRITCHARD: Well, we have a whole host of tools that
20 are available to us from taking defects or deficiencies in those
21 rules, which is mainly kind of a slap on the hand to get it
22 corrected all the way up to an emergency order where we can shut
23 down a railroad from operating. We also have authority to take
24 out equipment under the -- I forgot the name of it right now, but
25 we do have authority to do a lot of things with our tools.

1 MR. KLEJST: And could you tell us what a compliance
2 order is and under what circumstances the FRA would use a
3 compliance order?

4 MR. PRITCHARD: Well, a compliance order, again, it's --
5 if you could bear with me a second. It's a step down below what
6 we consider an emergency order and we haven't issued that many
7 compliance orders. We did initially, back in the late '70s and
8 '90s, up in that period of time. But there are provisions for
9 issuing the compliance order. It hasn't gotten to that because we
10 usually go into a compliance agreement where we sit down with the
11 parties and try to work out the problems so if it's a systemic
12 problem, they can -- we can work some kind of resolution out with
13 them and if they fail to do that, then we go on to a compliance
14 agreement.

15 MR. KLEJST: And typically, what does a compliance
16 agreement call for?

17 MR. PRITCHARD: It basically says if you don't comply
18 with what we have laid out for you in advance that those are real
19 technical high penalties that will be assessed against you.
20 They're immediate violations to begin with and failure to comply
21 with that compliance agreement goes into an emergency order where
22 we can shut you down at that point.

23 MR. KLEJST: So if there was a systemic problem on a
24 given railroad dealing with any one of the areas that you
25 regulate, this would be one of the close to final tools,

1 enforcement tools, that you could use --

2 MR. PRITCHARD: Yes.

3 MR. KLEJST: -- to bring that to closure?

4 MR. PRITCHARD: That's at the top of the pyramid of our
5 tools. The emergency order's the very top and then the compliance
6 order is below that.

7 MR. KLEJST: Thank you.

8 Mr. Leeds, if you could explain to us, please, how the
9 State Rail Safety Participation Program works under Part 212 of
10 Title 49?

11 MR. LEEDS: Yes, I'd be happy to. What it is, first of
12 all, it's any state that wants to participate with us and have --
13 and hire inspectors, but they have to have legal authority to be
14 able to inspect, which is a state action required for that state
15 to have -- to give them jurisdiction to be inspecting railroads.
16 Once that happens, then they reach an agreement with us. We do
17 this annually. We update our working relationship with the state
18 as far as what they agreed to and what we will be doing. And it
19 gives us an additional inspector workforce. It's around 170
20 inspectors for 30 states. It's an average. Sometimes it's above
21 that a little bit and sometimes it's below, as well as the -- but
22 it's been in that range for a long time.

23 The state inspector program, those inspectors that
24 inspect for us are required to go through our training program. I
25 have trainers that -- for all the five disciplines and these

1 inspectors have to take a couple classes every year. If they fail
2 to do so over a two-year period, then we will decertify them to do
3 inspections for us so that way we can guarantee that they are in
4 compliance with our procedures when they're out enforcing our
5 regulations in behalf of the Federal Railroad Administration.

6 We also have a handbook that was prepared with the state
7 manager's cooperation. With them it's a handbook, it's guidance
8 that they use in order to have an effective working relationship
9 with us and we have with them. So there's a clear understanding
10 of what's expected from them and what's expected from us. This
11 helps with the communication process. We also require, for their
12 inspectors, that they inspect at least 50 days a year for them to
13 be in our program. And this was an agreement we reached with the
14 state managers over a couple of years of discussion. If you're a
15 manager, a state manager doing inspections, then we require at
16 least 40 days of inspection time for when they go out to, you
17 know, examine railroad operations to see if they're in compliance
18 with whatever discipline they're specialized in.

19 MR. KLEJST: Okay, thank you. And does this group of
20 170 supplement the 400 that Mr. Pritchard referred to earlier?

21 MR. LEEDS: Yes, it's in addition to the 400 that we
22 have.

23 MR. KLEJST: Not in lieu of but to supplement that 400?

24 MR. LEEDS: Yes. I mean, that's a really touchy issue,
25 I think, for states and we're very sensitive to that. We have,

1 which I run out of my office, it's a national inspection plan. We
2 look at our data and we provide guidance for where we think we
3 need to have our state -- our federal inspectors, based on the
4 risks that we're seeing in this model. And then the risk model
5 gets adjusted based on regional management providing feedback on
6 any new current information they may know over and above what our
7 data is telling us and what we have in our database. And that
8 means that we allocate our federal inspectors nationwide based on
9 what we see as risks for all 400 of our federal inspectors. Then
10 the states will add their 170 inspectors on top of what we have in
11 their state, in order to have additional compliance for
12 inspections in their state, over and above those states who choose
13 not to participate. And those are the states with a lot of
14 railroad activity that have state inspectors. So I mean,
15 California and Texas are the real big programs. Pennsylvania has
16 a decent size program. Ohio, Chicago, Illinois area.

17 MR. KLEJST: Okay. And do these inspectors under the
18 state program have the same authority as do the individuals that
19 perform these inspections as members of FRA staff?

20 MR. LEEDS: Yes, for regular inspections they do, yes.
21 And for writing violations as well.

22 MR. KLEJST: Thank you. That was my next question --

23 MR. LEEDS: Yes.

24 MR. KLEJST: -- but thank you.

25 These next series of questions will be for Mr. Flanigon,

1 of the Federal Transit Administration. Rather than spend time
2 focusing on the organization structure of your department, what
3 I'm going to request is an organizational chart with some
4 information listing the numbers of individuals in each of the
5 various groups that either report to you or the reporting
6 relationships of the Office of Safety and Security through the
7 administration of the FTA. So if you can provide that to us
8 separately, I would appreciate it.

9 MR. FLANIGON: Certainly.

10 MR. KLEJST: Does the FTA have authority to promulgate
11 regulations to the rail transit industry?

12 MR. FLANIGON: No. Actually, the FTA is prohibited by
13 statute from regulating the -- I believe the phrase is the
14 operations of rail transit systems across the country. And for
15 the FTA to promulgate a regulation it must receive specific
16 authority from Congress to do so, which has happened for the
17 implementation of the drug and alcohol testing program throughout
18 the rail transit industry.

19 MR. KLEJST: Recognizing that limitation under the U.S.
20 Code 5334, prior to the December 7th, 2009 submission to Congress
21 by the Secretary of the Department of Transportation for the FTA's
22 ability to provide oversight of the transit industry, are you
23 aware of any initiative on behalf of the Federal Transit
24 Administration to make such a request?

25 MR. FLANIGON: To make a legislative request to

1 Congress?

2 MR. KLEJST: Essentially the request that was put forth
3 on December the 7th of 2009. Are you aware if any actions were
4 taken prior to that, over the past years, to request that level of
5 authority, given the restrictions that you mentioned in your
6 previous answer?

7 MR. FLANIGON: I have no personal knowledge of that.

8 CHAIRMAN SUMWALT: And before we go on, let me just
9 interrupt here for a second, Mr. Klejst. So we would like to
10 request -- put in an official request for the organizational
11 structure of the FTA.

12 MR. FLANIGON: Yes, of course.

13 CHAIRMAN SUMWALT: Okay.

14 MR. FLANIGON: We'll supply that in short order.

15 CHAIRMAN SUMWALT: Short order would be?

16 MR. FLANIGON: In the next week or sooner.

17 CHAIRMAN SUMWALT: That'd be wonderful. Thank you,
18 Mr. Flanigon.

19 MR. KLEJST: And if a rail transit property is in
20 noncompliance with an element of their System Safety Program Plan,
21 can the FTA initiate any action, for example, civil penalties,
22 fines or any other sanctions of that rail transit agency?

23 MR. FLANIGON: No, the ability of the FTA to issue any
24 kind of fine or sanction is contained with the 659 regulation, and
25 that applies, I believe, as was testified to earlier by one of the

1 TOC representatives, applies to the state or urbanized area if the
2 state is not implementing a program that meets the requirements
3 of 659 or is not making -- I believe the phrase is adequate effort
4 to come into compliance.

5 MR. KLEJST: And if there was a rail transit agency that
6 did not accept federal funds for operating or capital, would they
7 still be covered under Part 659?

8 MR. FLANIGON: No, they would not.

9 MR. KLEJST: So therefore there would be no need for
10 them to have a System Safety Program Plan or comply with any of
11 those regulations, then?

12 MR. FLANIGON: Not unless it was required by some other
13 entity.

14 MR. KLEJST: Thank you. Other than the triennial audits
15 required under Part 659, does the FTA conduct any other
16 inspections, audits, of rail transit agencies?

17 MR. FLANIGON: The FTA, in our other programs, performs
18 oversight that's necessarily safety related, over financials and
19 construction schedules and grant performance.

20 MR. KLEJST: As far as your department, the Office of
21 Safety and Security, would there be any other activities?

22 MR. FLANIGON: Well, the other activity would be what I
23 alluded to earlier, the drug and alcohol program. We have an
24 audit program where we will go to different transit agencies and
25 audit their programs. That's rail and bus and other carriers.

1 MR. KLEJST: Now, the FTA's audit of the state safety
2 oversight agencies, that takes place every three years?

3 MR. FLANIGON: Yes, approximately.

4 MR. KLEJST: And how is that different from the audit
5 that takes place of the rail transit agencies by the state safety
6 oversight agency? Are there different elements examined or are
7 there different --

8 MR. FLANIGON: Yes.

9 MR. KLEJST: -- activities that you would audit?

10 MR. FLANIGON: Yes, there's some overlap in that and
11 some of the audit activities get to the transit agency level
12 because it's necessary to confirm that, for example, there were
13 some questions earlier today about auditing accident
14 investigations. So one of the requirements from the federal level
15 is that the state agency have a program to get accident reports
16 from the transit agency and oversee those investigations or
17 conduct those investigations.

18 And so during a federal audit of the state oversight
19 agency we may take a look at what accidents have been reported by
20 the transit agency and review some of their records and activities
21 to see that that's being carried out properly. But it is
22 essentially an audit of the state oversight agency and their
23 implementation of the 659 regulation.

24 MR. KLEJST: Okay. And I asked you a question about
25 regulations that may apply to federal transit agencies and we

1 understand that that's not within the capability of the Federal
2 Transit Administration at this point. Can the FTA establish
3 standards?

4 MR. FLANIGON: No. The prohibition or the statutory
5 limitation on FTA's authority does extend to regulatory standards,
6 such as event recorders is one that we've talked about here quite
7 a bit.

8 MR. KLEJST: How about standards that are non-
9 regulatory, if you wanted to say that these are recommended
10 industry best practices that we would like to see each of the rail
11 transit agencies have in their operating plans?

12 MR. FLANIGON: We can issue recommended best practices
13 and in fact have done so. As an example, going back to event
14 recorders, at the time that the recommendation was made out of one
15 of the NTSB investigations -- I believe it was in Chicago -- that
16 cars be equipped -- I guess it was reiterated, but it was out of
17 the Baltimore accident. But anyway, one of the transit accidents,
18 FTA received that recommendation and our response was that we did
19 not have the statutory authority to require that all transit
20 vehicles be equipped with event recorders.

21 At the same time our administrator at that time sent a
22 dear colleague letter to the industry encouraging, you know,
23 spec'ing event recorders in new vehicles. We conducted a survey.
24 We have a published document on event recorders in transit
25 vehicles. So we can do those sorts of things. And in fact, we

1 also, not my office but other offices in FTA, support industry
2 standards and development. And so we've helped with a variety of
3 standards for the industry, including the development of a
4 standard for a railcar, a rail transit car event recorder, through
5 the IEEE and through the American Public Transportation
6 Association.

7 MR. KLEJST: Thank you. Now if a rail transit agency
8 were to accept FTA funds for a new equipment acquisition, can any
9 requirement be attached to those funds for a rail transit agency
10 to meet either crashworthiness standards, event recorder
11 standards?

12 MR. FLANIGON: No.

13 MR. KLEJST: Okay.

14 MR. FLANIGON: That statutory prohibition applies to
15 that sort of requirement.

16 MR. KLEJST: And what action does the FTA take when the
17 NTSB issues a recommendation to the rail transit industry?

18 MR. FLANIGON: Are you talking about a recommendation to
19 the FTA?

20 MR. KLEJST: Yes, if a recommendation is made to the
21 FTA, what action is taken by your group or by the FTA overall,
22 whether it's your group or a different group within the FTA?

23 MR. FLANIGON: Well, it might be best if I could provide
24 an example, kind of walking through one of the recommendations, of
25 what we've done and how we approached it.

1 MR. KLEJST: If you could be succinct, that would be
2 great. We appreciate it.

3 MR. FLANIGON: Okay. Well, I'll start with a
4 recommendation related to this accident that's the subject of the
5 hearing. The first urgent recommendation that the Safety Board
6 issued to FTA required us or asked us to advise the industry of
7 the circumstances of the accident and to ask that we encourage
8 transit agencies around the country to review their own signal
9 systems and determine if some kind of redundant alarm, for lack of
10 a better term, system should or could be installed to mitigate the
11 risk. And what FTA did, I believe, either the same day or the
12 next day, our administrator sent out a dear colleague letter to
13 all the rail transit operators and advising them of this urgent
14 recommendation, attaching a copy of it.

15 We then later worked with our colleagues at the American
16 Public Transportation Association to sponsor or to encourage the
17 National Academy of Sciences to put together what's called a quick
18 study panel to do some survey work and to work with the industry
19 and that resulted in a meeting in November, I believe, in
20 Washington, D.C., where all the signal specialists from around the
21 country came and talked about what was being done in the industry
22 and what could be done. A number of the signal manufacturers were
23 there. And of course, subsequent to that, there were further
24 recommendations that kind of piled onto the agenda. And so that's
25 how we went about advising the industry and encouraging the

1 industry.

2 MR. KLEJST: So the most significant action you can take
3 is exactly what you described, just passing information on and
4 making the industry aware of it.

5 MR. FLANIGON: Facilitating --

6 MR. KLEJST: Facilitating possible change.

7 MR. FLANIGON: Yeah. We are statutorily prohibited,
8 given the current situation, from issuing a regulatory requirement
9 for --

10 MR. KLEJST: Yes.

11 MR. FLANIGON: -- the agencies --

12 MR. KLEJST: Thank you.

13 MR. FLANIGON: -- the agencies to take any specific
14 action in that regard.

15 MR. KLEJST: Does the FTA have the ability to approve or
16 disapprove the staff that is on a state safety oversight group?

17 MR. FLANIGON: I don't think so. No, we do not.

18 MR. KLEJST: Do you routinely review the qualifications
19 of staff from the state safety oversight agencies?

20 MR. FLANIGON: We do in the sense that, not with the
21 approve or disapprove, but one of the things that we have done to
22 try to improve the quality of the program is to set up training
23 programs. So each program manager across the country we've worked
24 with to set up an individual training plan that encompasses their
25 development to either improve or to gain some additional technical

1 skill and background in the job, so that they can do a better job.

2 MR. KLEJST: Okay, thank you. These next questions
3 would be for the American Public Transportation Association.
4 Ms. Waters, does APTA have the authority to develop or implement
5 any safety regulations or safety standards?

6 MS. WATERS: No, sir, APTA is a private nonprofit
7 membership association and our members include public transit
8 agencies and also private for-profit organizations who provide
9 goods and services to the industry, academic institutions,
10 associated railroads, international providers of services. But in
11 short, no.

12 MR. KLEJST: Does APTA have any recommended standards as
13 far as rail equipment operating practices, signal systems?

14 MS. WATERS: Yes. In fact, APTA began its work in the
15 area of standards development. Quite surprisingly, with the
16 commuter rail members of APTA, commuter railroads who are FRA
17 regulated, but who were desirous of more up-to-date standards for
18 passenger equipment, prior, there had been voluntary standards
19 promulgated by the Association of American Railroads. Over time,
20 as their members became more freight oriented and had less direct
21 involvement and responsibility in passenger operations, they
22 discontinued maintaining those standards.

23 And frankly, although even some of them had been
24 incorporated by reference in FRA regulation, in federal
25 regulation, the industry and the equipment and the technology had

1 moved forward. And so they did request us to do that. We have
2 since developed, I believe, about 200, or thereabouts, standards,
3 recommended practices, guidelines, white papers, essentially
4 involving the collective wisdom of the industry to assist our
5 members and the industry as a whole.

6 MR. KLEJST: And that would be for light and heavy rail
7 properties?

8 MS. WATERS: Our standards, we have standards that
9 pertain to commuter rail, heavy rail, metro, light rail, and bus
10 and paratransit.

11 MR. KLEJST: Okay, thank you. And these standards are
12 voluntary in nature; is that correct?

13 MS. WATERS: They absolutely are.

14 MR. KLEJST: And as an industry group, APTA cannot
15 assess any type of sanctions for either a member or a nonmember if
16 they'd elect not to use these standards?

17 MS. WATERS: No, we cannot.

18 MR. KLEJST: Mr. Grizard, does APTA have a program for
19 conducting safety audits of rail transit agencies?

20 MR. GRIZARD: Yes, we do.

21 MR. KLEJST: Could you briefly describe that program for
22 us, please?

23 MR. GRIZARD: Sure. The safety audit program is one
24 aspect of the safety management program. It's based on a system
25 safety concept that we put together within the committees at APTA

1 over the course of several decades. It basically represents best
2 management practices that we know of in the industry to manage
3 safety and security systems on bus, rail and commuter rail
4 properties.

5 MR. KLEJST: And could both member and nonmember
6 properties take advantage of that program?

7 MR. GRIZARD: Yes. The way that we do that, we have a
8 membership requirement for being involved in APTA, and if they're
9 an APTA member, then they can participate in our safety management
10 program.

11 MR. KLEJST: If a rail transit agency is a member of
12 APTA, is there a requirement for that agency to participate in the
13 safety audit program?

14 MR. GRIZARD: No, there's not. In fact, we have a lot
15 of folks that follow our guidance manuals on how to develop System
16 Safety Program Plans but aren't part of our auditing program. The
17 audit program is optional.

18 MR. KLEJST: Do any nonmembers, non-APTA members,
19 participate in that program?

20 MR. GRIZARD: Well, yes, but not in respect of being
21 auditees. We have people, such as the FRA, that are in
22 partnership with us and sit in on our audit of particular commuter
23 rails, for example, and participate in the audit activities, but
24 FRA is not a member of our audit program.

25 MR. KLEJST: So if a rail transit agency was not a

1 member of APTA, then they would not -- they could not be a
2 recipient of the safety audit program services then?

3 MR. GRIZARD: That's probably true.

4 MR. KLEJST: Are rail transit agencies that use the APTA
5 program for their safety audit function, are they required by
6 APTA, if they are an APTA member property, to implement those
7 recommendations?

8 MR. GRIZARD: The APTA program is a conformance and not
9 a compliance program.

10 MR. KLEJST: Well, if there was a recommendation made as
11 a result of the audit, would that member property be required to
12 implement that recommendation by the audit team?

13 MR. GRIZARD: No, they would not.

14 MR. KLEJST: Okay. And does APTA serve as a conduit for
15 passing safety related information on to the rail transit
16 industry?

17 MR. GRIZARD: Yes, we have a number of different ways of
18 providing that information.

19 MR. KLEJST: Could you briefly describe two or three of
20 those mechanisms in place?

21 MR. GRIZARD: Sure. A lot of the technical information
22 is processed through our -- and we're talking rail here, so
23 through our rail conference that we have every year, we have
24 technical sessions and there's a specific track dedicated to
25 safety issues throughout that conference. And the other areas

1 that we have for input would be through several different rail
2 committees. There's a rail safety committee, for example, that's
3 specific for rapid transit rail. There's also one for commuter
4 rail. There's a safety and security technical forum that meets
5 once a year. There's a number of forums that we use that are
6 electronic forms, kind of like mailing list type of forms, where
7 people can actually communicate between themselves about specific
8 problems that they might find and need some assistance with. And
9 then there's direct contact between APTA and the properties, just
10 answering questions and providing networking ability for somebody
11 that has a particular issue, who in the industry can they talk
12 with that has similar issues that they've dealt with. So we
13 provide a number of different types of communications there.

14 MR. KLEJST: Thank you. If an APTA rail transit -- APTA
15 member that is a rail transit agency experiences a significant
16 safety problem within their system, for example, a problem with
17 the signal system or a propulsion problem at a series of
18 equipment, for the benefit of other properties that may have a
19 similar type of a system in place, is there a mechanism to convey
20 that information on to other member properties or nonmember
21 properties?

22 MR. GRIZARD: Sure. And we do that either
23 confidentially or through public forum. Depending on which way
24 they choose to express that desire, they'll contact us and they'll
25 say, we're experiencing this type of a problem. We'd like to have

1 the industry survey to find out who else has similar problems, so
2 that we can contact them directly. And that's the most direct
3 method that we use, but there's other types of communications
4 available, too.

5 MR. KLEJST: And that would be for both member
6 properties and nonmember properties or just the APTA members?

7 MR. GRIZARD: Yeah, it would also be for nonmember
8 properties. We share our safety program information with
9 nonmember properties if they request that. The only criteria that
10 they have to be under an audit is to be an APTA member.

11 MR. KLEJST: And I think you touched -- this is my last
12 question. You touched upon -- you may have touched upon this
13 before in a previous answer, but does APTA collect and distribute
14 industry best practices in the rail transit industry for the
15 benefit of both members and nonmember properties?

16 MR. GRIZARD: Yes, we do. That's part of our audit
17 process, so that's why I said it's not a compliance audit. We're
18 looking for conformance to their plan, and in the process of
19 looking at conformance to their plan, we find some places where
20 they actually excel. Maybe within a large organization one
21 department might be approaching an audit element in a much better
22 way than another department in the same organization does, and we
23 call that a best -- an effective practice.

24 But then we also run across what we call industry
25 leading effective practices, where they're raising the bar.

1 Nobody else has developed the sophistication or the uniqueness or
2 the effectiveness that they have. And so we put that in our audit
3 reports and then we take that and we database it so that if
4 somebody else wants to know -- they're having issues in a certain
5 area, that they contact us and say who do we know in the industry
6 that's got a good handle on this that we can contact, and we
7 provide that information to them.

8 MR. KLEJST: And that was called a leading industry
9 practice?

10 MR. GRIZARD: That's leading -- industry leading
11 effective practice.

12 MR. KLEJST: Thank you. Mr. Chairman, I've concluded my
13 questioning.

14 CHAIRMAN SUMWALT: Thank you. We'll now go to
15 Mr. Downs.

16 MR. DOWNS: Thank you, Chairman. I'm going to expound a
17 little bit upon Mr. Klejst's last few questions. What I'm looking
18 for is to get a comparison between the three organizations, APTA,
19 FTA, FRA, as to a few safety mechanisms and systems. And the
20 particular questions I'm going to address through the panel one at
21 a time and I'll allow -- where there's multiple panel members I'll
22 allow amongst yourselves to decide who's best qualified to answer.

23 My first question -- and I think the APTA has already
24 addressed this just now, but let me repeat it and allow you to add
25 if there's anything else. Can you please provide a brief

1 summarization of the mechanisms that your organization employs
2 regarding the monitoring of actions taken when alerts, bulletins,
3 directives and/or guidance has been issued to the railroad
4 operations that you have oversight of or provide advocacy support
5 to? APTA, in your case that would be advocacy support, of course.
6 What I'm looking for here is mechanisms for issuance, compliance,
7 follow-up and closure determination. Anything else you'd like to
8 add to the response you just gave to Mr. Klejst?

9 MR. GRIZARD: Let me go ahead here. We actually do
10 track, monitor and follow up on recommendations that we've given.
11 The audit system that we use is a three-year process, where we
12 have an assessment period where we actually go in and assess and
13 look at their current level of safety performance.

14 When we come back and we do a very thorough auditing
15 process on that, we have a 45-day window to allow the property to
16 review and respond to the preliminary findings of that, and once
17 they've responded to that, part of the response is an obligation
18 that they create what we call a CAP, a corrective action program,
19 for the areas that they're going to address and then we track that
20 through the next year.

21 And at the end of the cycle we do a management review of
22 their progress, usually with the executive team itself. So even
23 though we don't have -- we can't force them to comply with
24 anything that we've asked them to do. It does get a high-level
25 review internally. So if managers have stalled the process or

1 have failed to follow up, it does get the light of day at the top
2 management level before we close our audit cycle with them.

3 MR. DOWNS: Great, thank you. And a quick follow-up
4 question of that. Is there a mechanism in place for the periodic
5 review and potential revision of each of your processes?

6 MR. GRIZARD: Yes. The manuals themselves, the guidance
7 manuals are -- we just did a review of, and update of, the
8 commuter rail manual, for example. The audit process, themselves,
9 we final those out every three years and start another process
10 with them. And for each of the agencies that participate in that
11 audit program, that's one of the key questions that we look at
12 when we do the audit is what is the frequency of review of their
13 safety critical documentation.

14 MR. DOWNS: Thank you, sir. Let's move on to FRA,
15 please. The same question. I'll repeat it. Can you please
16 provide a brief summarization of the mechanisms that organization
17 employs regarding the monitoring of action taken when alerts,
18 bulletins, directives or guidance has been issued that you have
19 oversight of. We're talking again mechanism, issuance,
20 compliance, follow-up and closure determination.

21 MR. PRITCHARD: Okay, on our inspections, again, if we
22 are finding noncompliance, for example, we increase those
23 inspections until we get compliance. If we don't get compliance,
24 then we move up to our compliance agreements and then compliance
25 orders from there and then emergency orders. On emergency orders,

1 we've issued 26 of those. Since 1970 we have that authority and
2 so we use that mechanism very judiciously, as far as it's a big
3 club to go after a rail carrier. We also issue safety advisories
4 and bulletins out to our people and we continue to monitor all of
5 those operations that are in place. I'm not sure if that --

6 MR. DOWNS: Yes, that answers nicely, thank you. And a
7 follow-up to that, mechanisms in place for the periodic review or
8 potential revision.

9 MR. PRITCHARD: We do that continually. We're always
10 reviewing things. In fact, we just finished -- we're in the
11 completion of our technical bulletins, I mean enforcement manuals
12 that have been completed. It's a living document for each of our
13 five disciplines. So we've been doing the revisions like every
14 two years or less to keep current with everything going on. John,
15 do you want to add?

16 MR. LEEDS: Yeah, I think that it's worthwhile nothing
17 at this point that we put all of this information on our website
18 for the industry to see what it is we're finding and technical
19 bulletins, safety advisories, as well as our manuals, our general
20 manual, our discipline-specific manuals. So they know what it is
21 that we're looking for, and the guidance we're giving our
22 inspectors, hopefully that will help them improve the way they
23 behave.

24 MR. DOWNS: And they'll do this periodically, one, two
25 years, whatever, either the statute or your practice prescribes?

1 MR. LEEDS: Yes. What we try to do is -- especially
2 when we have, you know, as far as Internet connection and
3 information is try to make additions and upgrades as the
4 information comes along. So it's always ongoing.

5 MR. DOWNS: Great, thank you. Move on to FTA, and
6 again, the short answer, yes or no, is applicable here also. I'll
7 repeat the question. Mechanisms that your organization employs
8 regarding monitoring the action taken when alerts, bulletins,
9 directives or guidance has been issued to railroad operations that
10 you have oversight of or provide advocacy support to.

11 MR. FLANIGON: Yes is the short answer, and I'll expand
12 a little bit on that. We do a number of things to follow up and
13 I'll use the state safety oversight program, audit program, as an
14 example. We monitor that closely. In terms of the finding, we
15 have just started a new three year cycle of these state oversight
16 reviews and are taking that opportunity to change tack a little
17 bit and develop what we're calling a more focused approach where,
18 rather than look at the universe of things we might ordinarily
19 look at, we're trying to focus in a little more on what we believe
20 to be challenge areas for that particular oversight agency.

21 As far as sharing with the folks we work with, we
22 sponsor two meetings a year, where we bring all the state
23 oversight agencies together. At one of those meetings we bring in
24 the transit agencies as well. At the state oversight agency,
25 where it's just the oversight representatives, we actually pay

1 travel and expenses to get them there and feed them and so forth.
2 And so we go over what we've been finding, what are the
3 improvement areas, what are the successes.

4 We have people who have particularly good practices,
5 often will provide presentations and dialogue with the community
6 on how they're doing that. Other mechanism, we have a website, we
7 have a process at FTA, where our administrator will send a dear
8 colleague letters. I explained that a little bit with the
9 recommendation. But there may be other areas where the
10 administrator would send out a dear colleague letter. One of the
11 ones last year was on texting and cell phone use and the potential
12 hazards of that, to just put a reminder out there and ask agencies
13 to take a look at their policies and practices. Did I answer your
14 question?

15 MR. DOWNS: You did, thank you. And a follow-up to
16 that, of course, is the periodic review and potential revision.
17 Is that done on a schedule or is that done as needed, given --

18 MR. FLANIGON: Well, no, we try to take a strategic look
19 at that and one of the things that we've started this past year
20 and will continue on is we call it a document management system,
21 where we have a list of all the various documents that we maintain
22 that provide guidance and best practice, and so forth, to the
23 industry and stakeholders, and we go through and kind of
24 prioritize those and which ones might be ready for a revision and
25 where should that go in the queue, given that we can't do

1 everything all at once.

2 MR. DOWNS: And again, you have no regulatory
3 requirements, of course. Do you have any recommended practices
4 that you can cite specifically?

5 MR. FLANIGON: Yeah, one of the more recent ones that
6 I'll cite and it's relative to the subject of this hearing is we
7 put together a recommended best practice, I think we called it, on
8 doing three-year reviews for the states, but it is also equally
9 applicable or applicable to transit agencies doing their own
10 internal audit programs. Another element that we put in place to
11 support that effort is we worked with the Transportation Safety
12 Institute to actually develop a two-day course on internal safety
13 auditing and that was piloted just this last fall. WMATA was kind
14 enough to host that class. And so there's both a training class
15 and a recommended practice document that can be used by the
16 industry.

17 MR. DOWNS: Great, thank you. Moving on now to,
18 specifically, passenger car safety standards, guidelines or best
19 practices for crashworthiness, specifically, crashworthiness.
20 Again, we're going to start with APTA and then go through the
21 question. We're looking for comparison of the criteria that you
22 have in place. Can you please provide a brief summarization of
23 the passenger car safety standard guidelines for crashworthiness
24 as implemented and/or promulgated by your organization?

25 MS. WATERS: Yeah. Are you specifically asking that

1 question pertaining to rail transit or in general?

2 MR. DOWNS: Specifically to transit, yes.

3 MS. WATERS: To rail transit?

4 MR. DOWNS: Yes.

5 MS. WATERS: Okay. We do have -- excuse me. We have
6 worked for -- I think it was a period of about five years,
7 cooperatively, collaboratively with the American Society of
8 Mechanical Engineers. APTA does not have a crashworthiness
9 standard. In fact, that was published and is maintained by ASME.
10 Clearly, we have a great involvement in that and certainly we are
11 communicating that standard and working with our members to get
12 the information out about that standard. I'm sorry, was there a
13 follow-up to that?

14 MR. DOWNS: Yeah, the follow-up to that, is there a
15 mechanism in place for your organization, for the periodic review
16 and revision of any standards?

17 MS. WATERS: Clearly, since that one is not one that we
18 would maintain, we would not, although I am sure we would continue
19 in the future to collaborate with ASME on the maintenance of that
20 standard. For the rest of our standards development program, our
21 goal is to bring any of our standards, whether they were
22 promulgated as a group or over a period of time, we want to look
23 at them at about a five-year period and reconvene working groups
24 and subject matter experts to determine if it is still valuable,
25 if it is still current, if there are modifications that need to be

1 made. In some cases technology may have moved on and there may be
2 a standard that is no longer of use to the industry.

3 MR. DOWNS: Thank you.

4 FRA, the same question.

5 MR. PRITCHARD: Yes, we have -- in Part --

6 MR. DOWNS: Microphone, Mr. Pritchard.

7 MR. PRITCHARD: I'm sorry. In Part 238 we have
8 passenger equipment safety standard requirements. It prescribes
9 minimum federal safety standards for railroad passenger equipment.
10 It's been effective since January 1, 2002. There's also a part in
11 there requiring crash energy management and it was just updated
12 January 8th of this year, 2010, where we included end strengths
13 for cab cars and multi-unit locomotives.

14 We also have a current RSAC working group looking at the
15 new requirements for high-speed passenger operations and the RSAC
16 is meeting this March the 18th. We canceled the February meeting
17 because of the weather and hopefully, at the March 18th, we'll
18 have a readout on the meetings we've held so far on the new
19 passenger equipment standards.

20 MR. DOWNS: Thank you. Again, to follow up on that,
21 mechanism in place for the periodic review and potential revision
22 update.

23 MR. PRITCHARD: As I just indicated, we've already had
24 updates and we continue to do that.

25 MR. DOWNS: You just had it. Is there a schedule you

1 follow with these, statutorily, or is it every three years, five
2 years, or something like that?

3 MR. PRITCHARD: No, we're trying to keep up with the --
4 as Mr. Waters said, with the technology as it comes in and how
5 they apply for waivers for meeting our compliance. If we have too
6 many waivers, then we need to restructure the rules or something
7 of that type. But there is no schedule.

8 MR. DOWNS: I'm going to deviate a little bit. As a
9 further follow-up, you've utilized an in-house consultant, for
10 lack of a better word, the Volpe Center, I believe, for the
11 organization and the recognition of the various elements; is that
12 correct?

13 MR. PRITCHARD: That's correct.

14 MR. DOWNS: And did this also -- a lot of these were
15 based on crash testing as well?

16 MR. PRITCHARD: That's correct, yeah, actual crash
17 testing out at Pueblo.

18 MR. DOWNS: Very good. FTA, the short answer might be
19 applicable.

20 MR. FLANIGON: Well, given our limited regulatory
21 authority, we do not issue regulatory standards in this area but
22 we have supported APTA in their standards development program,
23 which has led to some standards work. We have also the crash
24 testing at Pueblo that you mentioned.

25 The FTA research office participated, financially

1 supporting some of that work. There are a couple of other
2 research projects that our research office has embarked on,
3 looking at light rail vehicle crashworthiness with relation to
4 automobiles, which is the most common accident or collision in
5 that realm, as well as some research on interior car standards for
6 passenger safety.

7 MR. DOWNS: Very good.

8 MR. FLANIGON: I'm sorry, research into. But that
9 research could support future standards.

10 MR. DOWNS: Very good, thank you. And that would make
11 -- render the follow-up on that moot. There would be no periodic
12 revision; you just participate. Okay, the next topic area,
13 interior safety features of transit equipment. We're talking
14 interiors, emergency lighting, signage, seat design, things of
15 that sort. Again, basically the same basic question. Please
16 provide a brief summarization of your standards that your
17 organization might have organized. Does APTA have anything along
18 these lines?

19 MS. WATERS: Actually, as it pertains to rail transit,
20 we have --

21 MR. DOWNS: Microphone, please.

22 MS. WATERS: As it pertains to rail transit, we have
23 three emerging standards that we anticipate. They're up for final
24 approval by the rail transit policy and -- planning and policy
25 committee for the standards program, March 15th. They include a

1 standard for emergency signage for rail transit vehicles, a
2 standard for emergency lighting system design for rail transit
3 vehicles, and a standard for low location emergency path marking
4 for rail transit vehicles.

5 MR. DOWNS: Thank you. And is there a mechanism there
6 for the periodic review and update? The same as before?

7 MS. WATERS: Yes, it would be the same.

8 MR. DOWNS: Great, thank you. FRA, the same question.

9 MR. PRITCHARD: Yes, we have in Part 239 passenger train
10 emergency preparedness. There's a whole host of requirements in
11 there, from emergency lighting, to exit windows, to ceiling
12 escapes, and it prescribes the minimum federal standards for the
13 preparation and adoption of implementation of emergency
14 preparedness plans by railroads connected with the operation of
15 passenger rail, and they're required to test their employees on
16 those requirements.

17 MR. DOWNS: Thank you. And there's a mechanism there
18 for the periodic review and update on those, too?

19 MR. PRITCHARD: We're always reviewing those periodic
20 updates.

21 MR. DOWNS: Great, thank you. FTA.

22 MR. FLANIGON: Again, given the statutory limitations on
23 FTA from directly regulating the industry, we have no regulatory
24 standards, no national regulatory standard, although the
25 administration's legislative proposal to Congress would allow us

1 to do that and we're hopeful that Congress will act on that. We
2 have, as I mentioned before, sponsored or financially sponsored
3 some of APTA's work in the area of railcar emergency preparedness.
4 We've also sponsored some research work that would look at two
5 things.

6 One is emergency communication with trains in the subway
7 should the train operator be unable to communicate, be away for
8 the control center to directly communicate with the passengers,
9 and these were -- these two projects were developed really after
10 the experience that -- the knowledge I had of the derailment in
11 Chicago and the issues that were raised in that report. The other
12 research project will look at a way for a transit agency to more
13 precisely locate a train that stopped in a subway environment that
14 cannot communicate with where they are, so they'll know which
15 emergency exits, which fans to run, and so forth, where to send
16 folks. And so we're hopeful that those will contribute to the
17 safety of the industry.

18 MR. DOWNS: Thank you. Last topic area addresses
19 emergency preparedness and response and safe emergency egress and
20 access in an emergency. APTA, do you have any safety standards,
21 guidelines that are organized?

22 MS. WATERS: I'll speak first and then I think
23 Mr. Grizard may want to speak from the standpoint of our safety
24 management program. As to the standards program for rail transit,
25 we do not in that regard. We do for the commuter rail standards,

1 several of which, I should add, were incorporated or have been
2 incorporated by reference into federal regulation.

3 MR. DOWNS: Thank you. Mr. Grizard.

4 MR. GRIZARD: Yeah, okay. Yeah, we also have an
5 additional program that comes out of the safety and security area.
6 It's an emergency preparedness program, too. Basically, it's a
7 mutual aid system, so that if a property experiences a situation
8 in one part of the country, that other agencies have already
9 identified equipment, personnel, and supplies that they can ship
10 over to them to alleviate some of the hardship that they'd be
11 having to operate under as a result of something catastrophic.
12 Katrina is the impetus for developing that program, and that was
13 done in cooperation with the FTA, in the development and
14 implementation of that database. But we also e-prep is also one
15 of the fundamental areas in our audit program that we look at and
16 evaluate as part of the safety and security programs and we do
17 that on the same three-year cycle.

18 MR. DOWNS: Great, thank you. FRA.

19 MR. PRITCHARD: Yes. Again, under Part 239 is the
20 passenger emergency preparedness. It requires testing every two
21 years. It's a written test and also an hands-on training. And
22 it's also being monitored under our Part 217 for efficiency
23 testing.

24 MR. DOWNS: And that's periodically updated also?

25 MR. PRITCHARD: Yes, sir.

1 MR. DOWNS: The same as before?

2 MR. PRITCHARD: Yes.

3 MR. DOWNS: Great, thank you. FTA, you've already
4 provided some testimony on this. Anything further you might want
5 to add, Mr. Flanigon?

6 MR. FLANIGON: Yeah. Well, I would just add that the
7 system safety program requirements also cover emergency
8 preparedness, so that the states that implement in that their
9 states, that's one of the elements that they're looking at with
10 the transit agencies. But again, because FTA does not have any
11 direct regulatory authority, we have no standards that we have
12 issued as regulations for the industry.

13 MR. DOWNS: Great, thank you. Mr. Chairman, that
14 concludes my questions.

15 CHAIRMAN SUMWALT: Thank you, Mr. Downs. Mr. Gura.

16 MR. GURA: I'd like to first direct my questions to
17 APTA, and whoever could answer it, it'd be fine. APTA standards
18 were once reference as guidance in 659 in the earlier 2000s, and
19 then it was removed. What prompted its removal in the
20 later 2000s?

21 MR. GRIZARD: I believe that that incorporation by
22 reference was the early version of the 659 regulation?

23 MR. GURA: That's correct.

24 MR. GRIZARD: Yes. And that was a reference to the APTA
25 guidance manual for the development of a System Safety Program

1 Plan and that is not an official APTA standard. That's just a
2 guideline document developed, oh gees, over 20 years ago, so it
3 predated the standards program. And over a period of time, I
4 think the state safety program wanted to further develop the
5 oversight on a more regulatory type basis. The APTA program is
6 really a management system, safety management system. It's not
7 really designed and conceived to be any type of a regulatory type
8 system. So it needed additional language to make it compliance
9 based rather than conformance based.

10 MR. GURA: Okay. Did the removal of it, then, did it
11 weaken the 659 as it presently stands, or would it have
12 strengthened it if the APTA standards would've been more
13 regulatory?

14 MR. GRIZARD: I can't really answer that for --

15 MR. GURA: Okay.

16 MR. GRIZARD: -- state safety oversight. Perhaps
17 Mike Flanigon could address that.

18 MR. GURA: Go ahead, Mike, if you could answer that.

19 MR. FLANIGON: Yeah, sure. Bill is correct that the
20 previous version of 659 did reference the APTA guideline on
21 developing System Safety Program Plans. And I kind of put a
22 different hat on here because it was actually based on a
23 recommendation from the Safety Board, that I was involved in
24 investigating an accident.

25 There were two rear-end collisions in Chicago, where it

1 was found that there were really lapses in the internal transit
2 agency oversight of their own operating rules. And so out of that
3 investigation, one of the recommendations was to the CTA to
4 develop a more robust internal rules compliance audit type of
5 program, and then a companion recommendation went to the FTA to --
6 or perhaps it was to APTA -- to revise the standard, the
7 recommended development of the plan to include an element that
8 looked at rules compliance. And at that time the FTA, where I did
9 not work at that point, decided that rather than ask APTA to
10 revise their recommended practice for developing these plans, that
11 the FTA would essentially just write the requirements into the
12 regulation, which is what they did. And then they included that
13 element in the system safety program that requires now transit
14 agencies, or requires the states to require the transit agencies
15 to have a rules compliance program.

16 MR. GURA: Thank you. Mr. Pritchard, we heard the term
17 audit thrown around here, with the triennial audits, and what does
18 the term audit mean to the FRA and what constitutes the FRA to
19 conduct an audit on a railroad?

20 MR. PRITCHARD: Well, in Part 225, that's our accident
21 reporting requirements, we're required now by the Safety Act of
22 2008 to do them every two years on the Class 1 railroads. We were
23 doing them every three years, so we've reduced that -- have I got
24 that right, John, two years? It's down to two years for the
25 Class 1 railroads. So that's been a change and it's going to be a

1 burden, a little bit of a burden on us to managing resources, as
2 we heard earlier today about everyone's shy of resources.

3 So that's a planned audit. Those are audits that we do
4 conduct on the Class I railroads. The others are inspections.
5 There's no really plan for that. Under John's program, as he
6 mentioned earlier, as to where he places people, it's based on our
7 inspection results and that's all tabulated in his shop and from
8 there we determine where our inspectors go on a daily basis. So
9 at one time when I was an inspector many moons ago, you went
10 anywhere. Now you're basically data-driven as to where you have
11 to make your inspections.

12 MR. LEEDS: I would like to just add one thing to what
13 Ed said. For the smaller railroads we do have a system in place,
14 but it's for the regions to address. They go out on a schedule
15 basis and we cover all the smaller railroads over a three to four-
16 year period, I believe.

17 MR. GURA: Okay. And we also heard that you
18 participated in an APTA audit. Could you explain to me, and what
19 does that involve?

20 MR. PRITCHARD: I'm sorry, I didn't hear that. Was that
21 APTA audit?

22 MR. GURA: Yes, I thought I heard that you said you
23 participated in an APTA.

24 MR. PRITCHARD: We do. That was on the system safety
25 plans. We do not have any requirements yet on system safety

1 plans. It's an open -- our railroad safety advisory committee is
2 looking into making that a federal requirement. Right now it's an
3 APTA standard and we do go out and assist APTA when they do their
4 audits.

5 MR. GURA: Okay. Is that just on transit?

6 MR. PRITCHARD: No, it's not on transit, it's on --

7 MR. GURA: On light rail?

8 MR. PRITCHARD: It's on light rail, yeah.

9 MR. GURA: Okay.

10 MR. PRITCHARD: And commuter rail.

11 MR. GURA: Commuter rail.

12 MR. PRITCHARD: Only.

13 MR. GURA: Only commuter rail. Okay.

14 And Mr. Flanigon, I have one little kind of question
15 here. Representative Oberstar said that the FTA's state safety
16 oversight program created in 1991 requires that states enforce
17 safety requirements for rail transit systems. However, the legal
18 authority varied and are limited from state to state. What steps
19 do you perceive necessary to have consistent and encompassing
20 oversight programs that could be enforced?

21 MR. FLANIGON: Well, thank you. And I was thinking
22 about that essentially the question you're asking, as the previous
23 panel was going through -- and I think we saw some of the
24 inconsistency in the approaches between the states. Some had very
25 robust independent authority. Some had very little authority,

1 other than what's in the 659 regulation. And in fact, those that
2 -- I think, when you look across the 28 state programs, that, by
3 and large, they're under-resourced, they lack the independent
4 authority.

5 I think having that kind of independent authority that
6 we heard about from California and from Massachusetts is really
7 the very tail of the curve. There's only about two or three
8 agencies that have that kind of authority. They often lack the
9 technical staff resources to carry out an effective program, and
10 in a few cases they're not as independent as they might otherwise
11 be. After the new administration or new political leadership came
12 into town, that coincided with, of course, the very tragic
13 accident that we're all here as a result of, as well as a couple
14 of other accidents around the country, in San Francisco and in
15 Boston, that happened around the same time, and it really focused
16 the national attention on the adequacy of safety programs for rail
17 transit.

18 And while we would stress that rail transit and public
19 transit in general is absolutely one of the safest methods of
20 travel, there really needs to be a better oversight program on a
21 national level to keep it that way. And it's really important
22 that it's not only safe but that the public understands it's safe
23 and perceives it's safe, and as the years roll on and the
24 infrastructure ages, the ridership increases, there's going to be
25 more and more demands on these systems.

1 And so the Obama Administration, as a result of the
2 Secretary's efforts to pull together a working group at DOT, took
3 a look at various options and came up with a legislative proposal
4 that the Secretary introduced to the Congress in December of 2009,
5 and we're very encouraged that the Senate has actually introduced
6 that proposal. It would address those three key areas that are
7 lacking now in the state oversight program.

8 It would provide funding to support state efforts where
9 there were adequate programs in place, and where adequate programs
10 were not in place, it would allow the federal government to
11 directly regulate rail transit. It's going to take a change in
12 the law to do that. It would also set up a certification program
13 where the Federal Transit Administration, with help from the
14 industry and our sister agencies at DOT, could put together a
15 certification program where we can try to set standards and put
16 together training programs that will gear up folks to carry out
17 this kind of program. And it would, lastly, provide authority for
18 the FTA to set national standards and it would convey that
19 authority to states that could stand up a reasonable program to
20 carry it out. So we're very encouraged and hope that the Congress
21 will act on this promptly.

22 MR. GURA: From what I understand, both the House and
23 Senate bills kind of mirror the FTA's proposal; is that correct?

24 MR. FLANIGON: Well, I haven't heard about the House
25 bill. I may just not be aware of it. But I know that there has

1 been a Senate bill introduced.

2 MR. GURA: Okay, thank you. No further questions,
3 Mr. Chairman.

4 CHAIRMAN SUMWALT: Thank you.

5 And Mr. Klejst, I understand you have one follow-up.

6 MR. KLEJST: Just one follow-up question. Mr. Flanigon,
7 we've heard testimony during the past few days that state safety
8 oversight agencies are required -- require the rail transit
9 agencies to report to them major safety events such as the failure
10 of a safety critical system. Is there a way that the FTA can
11 collect that information from the state safety oversight agencies
12 so that they can pass it on throughout the rail transit agencies
13 in the country, so that they could make a similar assessment if
14 they had a similar problem on their system?

15 MR. FLANIGON: Currently, there's not a specific
16 reporting requirement on unsafe signal system failures.

17 MR. KLEJST: Or any failure of a safety critical system.

18 MR. FLANIGON: What you're referring to we call the
19 hazard management system. So it's a requirement that each state
20 oversight agency work with their transit agency partners to set up
21 a program where certain events that --

22 MR. KLEJST: Well, no, that I understand. But is there
23 a mechanism that you as the FTA can collect that information so
24 that it's passed on not just to that one state safety oversight
25 agency, so that the rail transit community in our country is aware

1 of it so that they could too look at --

2 MR. FLANIGON: The best current mechanism -- and I hear
3 what you're saying. It's an idea that we'll take back and try to
4 look at. But the current mechanism would be either through just
5 sort of informal e-mail alerts if we became aware of something
6 like that. But the best mechanism that we have right now would be
7 our annual meetings, which happen twice a year, where people come
8 together and share information.

9 MR. KLEJST: So no real-time feedback mechanisms in
10 place?

11 MR. FLANIGON: We don't have a real-time system, but let
12 me think about that.

13 MR. KLEJST: Thank you.

14 CHAIRMAN SUMWALT: Thank you, Mr. Klejst.

15 We will now move to the parties and we'll begin now with
16 the D.C. Fire and EMS Department.

17 CHIEF SCHULTZ: No questions, sir.

18 CHAIRMAN SUMWALT: Thank you, Chief.

19 And ATU?

20 MS. JETER: Only one of the FTA. With the new language
21 that the Senate is looking at, would WMATA be excluded from that
22 language because of the compat (ph.)?

23 MR. FLANIGON: No.

24 MS. JETER: Thank you.

25 CHAIRMAN SUMWALT: Okay, thank you.

1 Alstom?

2 MR. ILLENBERG: No questions.

3 CHAIRMAN SUMWALT: Thank you.

4 Ansaldo?

5 MR. PASCOE: No questions.

6 CHAIRMAN SUMWALT: FRA. I'm sorry, I'll tell you what
7 we're going to do. Since you and FTA both have witnesses, we'll
8 allow you to go -- you can go in turn or you can go last, your
9 choice. FRA? That would be --

10 MR. McFARLIN: Yeah, we'll go last, thanks.

11 CHAIRMAN SUMWALT: Okay, thanks.

12 And FTA, you'd also like to go last; is that correct?

13 UNIDENTIFIED SPEAKER: That's correct.

14 CHAIRMAN SUMWALT: That's fine.

15 And TOC?

16 MR. MADISON: Yes, we have a two-part question for
17 Mr. Flanigon. If an SSO agency is having a dispute with a transit
18 system --

19 CHAIRMAN SUMWALT: I'm having a little trouble hearing
20 you, though.

21 MR. MADISON: Sorry. Okay, let's try that again. If an
22 SSO agency is having a dispute with a transit system under its
23 jurisdiction and requests the FTA to assist it or intervene with
24 the transit agency, what actions would the FTA currently take?
25 And the second part to that question is, Can the FTA hold up

1 funding to a transit agency if it is not complying with its SSO
2 agency?

3 MR. FLANIGON: I'll start with the second question. In
4 the provisions that FTA has to enforce the 659 regulation, are
5 actually spelled out in the regulation and that is to withhold
6 five percent from the state or, I guess, a group of states if
7 there's more than one, but not directly at the transit agency. As
8 far as what could FTA do when a state oversight agency is having
9 difficulty getting compliance from the transit agency, I guess the
10 current ability would be in the area of essentially of what I
11 would call jawboning, you know, trying to reach out and trying to
12 draw attention to the problem.

13 One of the things that I know we are about to start
14 doing, and a number of our regional offices currently do this,
15 including the Washington, D.C. office, is to invite the agency to
16 the quarterly meetings that they have with the transit agencies on
17 their capital programs. What we want to do is now put -- there is
18 a safety section in that meeting and we want to expand that to
19 include the state oversight -- a state oversight agenda item so
20 that every quarter, when the general manager and the key leaders
21 at the transit agency meet with the FTA regional office, there
22 will be that state oversight item and we'll invite the state
23 oversight agency to participate.

24 So it will be a sort of ongoing method to elevate issues
25 if they should ever need to be elevated. I guess I would kind of

1 describe that as, you know, we're about continuous improvement.
2 We're looking for ways to do our job better. But with the current
3 program, I'd call that kind of a tune-up. You know, we're trying
4 to get it running as best as we can, where the more fundamental
5 issue, I think, is one that the legislation will solve, where we
6 really need an overhaul more than a tune-up and so we're anxious
7 the legislation can work its way through Congress so that we can
8 make the significant longer-term improvements that we believe are
9 necessary.

10 MR. MADISON: Thank you. We have no additional
11 questions.

12 CHAIRMAN SUMWALT: Thank you.

13 And WMATA?

14 CHIEF TABORN: No questions, Mr. Chairman.

15 CHAIRMAN SUMWALT: Thank you, Chief Taborn. We'll go
16 back now to the FRA.

17 MR. McFARLIN: Thank you. It appears to me, in a
18 similar fashion as analysis of such as accidents, injury trends,
19 et cetera, et cetera, and some of the conversation of the last two
20 days, there is a very evident common thread in the federal
21 agencies, and state oversight, for that matter, and that is,
22 bottom line, railroad, whether it's freight, passenger, commuter,
23 transit, safety.

24 The agencies obviously have very different levels of
25 authorities, but they have various equally different processes.

1 So I want to speak about that for a moment. And Mr. Pritchard, if
2 you would, would it be an accurate statement, sounding like FRA
3 may have the most stringent requirements and procedures, to
4 suggest or to say that FRA's first desire is actually to achieve
5 throughout the regulated railroads what might be called a
6 voluntary compliance? Yes or no?

7 MR. PRITCHARD: Yes.

8 MR. McFARLIN: Thank you. Would it also be, too, that
9 FRA uses its various enforcement tools that you touched on to
10 reach that appropriate level of compliance?

11 MR. PRITCHARD: Yes.

12 MR. McFARLIN: As part of those tools, is it true that
13 not only does FRA have civil penalty authority over railroads, and
14 in some cases companies other than railroads, such as hazardous
15 material regulations, that FRA actually has authority to level
16 penalty actions against individuals that knowingly or willfully
17 violate or cause to be violated the federal regulations?

18 MR. PRITCHARD: Yes.

19 MR. McFARLIN: Would you wish to expound that any or no?

20 MR. PRITCHARD: Well, we have the individual liability
21 that goes against an individual and the rail carrier -- excuse me
22 -- cannot pay for that individual's fine if he or she is written
23 up under the individual liability provisions.

24 MR. McFARLIN: Could I presume, just for the record,
25 that that is an action reserved for only the most significant of

1 cases and as I think I mentioned, the knowing and willful type
2 occurrences?

3 MR. PRITCHARD: That's correct.

4 MR. McFARLIN: Thank you.

5 Mr. Leeds, if I could ask you a little more about some
6 things that you mentioned related to determining focus of efforts.
7 We have heard for two days about resource limitations, which
8 obviously everyone's in agreement, everybody's short. But you
9 talked about analysis of data. You talked about, I think, a
10 national inspection plan. In other words, a specific program by
11 which your agency would determine the most effective focus and
12 most effective means to end up in improved rail safety. Could you
13 describe that for us a bit?

14 MR. LEEDS: Yes. What we've done with the data that we
15 have in our system is try to determine if it's an indicator on
16 where it would be important for our inspectors to be. Part of
17 that data, which is an inventory that our inspectors compile for
18 us and the volume railroad activity and where it is in their
19 territories, which is not something we get from the railroads, but
20 we also get information from railroads' accident reported
21 information. And then we have our inspection activities which
22 give us guidance in this model that we run. When we do that, it
23 gives us an indication of where we think the risks are likely to
24 be over the coming year and we use that for planning purposes. We
25 provide that information, our findings, to the regional management

1 and ask for them to provide feedback on what they see as their
2 plans and whether or not what we're advising to them from what we
3 found from our data analysis, that that's a regional approach. In
4 most cases it is. They're usually minor modifications, things
5 that they know about that are ongoing currently that the data
6 hasn't picked up that we need to really address.

7 So we modify the plan and then midyear we do another
8 modification. That process has proven to be reasonably helpful.
9 We've been doing it for the last five years and we've seen
10 noticeable improvement or safety results. The other part of that
11 has to do with Government Performance Results Act. It's a
12 requirement from Congress that we report on -- you know, we have
13 plans and we have processes that help us improve safety records.

14 And when we've linked this process that I've just
15 defined to that, meaning that in our performance evaluations for
16 all our managers in the field and some of us in headquarters, that
17 the safety improvements, they have to achieve goals that relate to
18 those overall goals that we report to Congress every year. We
19 also have a safety strategy report due to the new Rail Safety
20 Improvement Act that requires us to forecast what's likely to
21 happen over five years out. So all of that information helps us
22 in that process and further defines what we expect we will be
23 doing and how we'll, you know, get to, you know, a safer railroad
24 environment with the data that we have. But with all of that
25 said, I don't know if I've already said it at the outset, we

1 monitor for compliance. I mean, we're not everywhere. From our
2 analysis we've assumed, we monitor about two-tenths of one percent
3 of what's going on in the industry. So we have to try to be as
4 effective as we possibly can with the resources we have.

5 MR. McFARLIN: Thank you. One qualifying or follow-up
6 question to that explanation, Mr. Leeds. Would required reporting
7 or the information gained from federal-required reporting, such as
8 wrong-side signal and train control failures, certain equipment
9 failures, hazardous material releases, whatever the various
10 reports might be, would the information found from that reporting
11 be part of the data reviewed to determine areas in which to focus?

12 MR. LEEDS: It is, but with caution. I mean, you know,
13 what we have seen is that, you know, volume has a lot of to do
14 with, you know, how we want to plan. But we have safety
15 indicators such as you've outlined, that helps influence what the
16 model will tell people to do. But over the recent years, when
17 we've reviewed, you know, the success of what the model said and
18 what we found in terms of safety improvements in different
19 locations across the country, not all our data gives you best
20 results. Some gives you better results than others. So I mean,
21 it's something that's important to have in our process, but it's
22 also important to have our field input when we develop what we've
23 developed, because they have that, you know, firsthand experience
24 and it's more current.

25 MR. McFARLIN: Thank you.

1 Mr. Grizard, could you likewise kind of share with me
2 and us a general description of how your agency determines the
3 best areas to focus to end up in improved rail safety? What
4 programs you may revise, what actions you may take, those types of
5 things. How do you determine your effectiveness?

6 MR. GRIZARD: We have recently gone to a database for
7 all of our audit results so that we can now generate reports that
8 show, by similar properties, by mode, by the element within the
9 audit program, which areas that the industry is struggling with.
10 Before that, we knew empirically, just from conducting audits and
11 reviews, where weaknesses were, the obvious ones, but
12 systemically, we didn't know the full extent of it, because we're
13 auditing about 497 different elements within a program plan.

14 So it's difficult to really get a good vision of that
15 without a database, and now that we have a database, we're able to
16 really capture that data and see it and be able to act more
17 systematically and developing programs to deal with it. But prior
18 to that, there was a lot of input coming back, lessons learned, if
19 you will, from both conducting audits and from incidents that were
20 happening in the industry that we would integrate into the APTA
21 programs. If not into the safety management programs, then
22 certainly into areas such as standards, where we knew that we had
23 priority areas that we wanted to develop standards for. So that
24 was typically the process that we would take.

25 MR. MCFARLIN: Thank you.

1 Ms. Waters, did you want to add something?

2 MS. WATERS: Thank you, yes. In addition to Bill's
3 description, which is absolutely correct, it's amazing. When
4 things are voluntary, people are often very forthcoming and we get
5 much feedback directly from members and participants in all of our
6 programs, whether it be the standards development program, audits,
7 some of our other programs in the safety kind of arena, although
8 standards are much broader than just the safety.

9 And we do get requests, you know, for areas that an
10 individual property or a group may be struggling with and that
11 also informs. Through the standards program specifically, we have
12 a standards development oversight, a development and oversight
13 council. It's made up of both our private sector/public sector
14 members in various capacities throughout the organization and they
15 certainly, as part of what they do discuss, industry high-level
16 issues and concerns, so that we can set priorities in that regard.

17 MR. McFARLIN: Thank you. And lastly, Mr. Flanigon,
18 could you summarize the same sort of thing for FTA, as far as
19 determining most significant areas of focus and FTA effectiveness?

20 MR. FLANIGON: Sure. Well, one of the areas that I'll
21 kind of return to, what I talked about earlier is, as we go
22 through these three-year audit cycles, we capture the results and
23 look at where potential problem areas are. So we try to refocus
24 our audit efforts on where we think there'll be the most
25 improvement or most payoff.

1 We also monitor accident data through two databases. We
2 have an industry-wide rail and bus data reporting through
3 something called the National Transit Database. It has safety
4 elements to it. And then on an annual basis, we get from the
5 state oversight agencies their annual report, where we look at
6 what accidents they have investigated and where the problem areas
7 are. And so we try to focus efforts based on that sort of data.

8 MR. McFARLIN: Thank you. I'm finished, thank you.

9 CHAIRMAN SUMWALT: Okay, thank you. Now to the FTA.

10 UNIDENTIFIED SPEAKER: Yes, thank you. In its
11 testimony, the FRA spoke of its rail safety advisory committee and
12 how it assists the agency in developing standards and regulations.
13 And this is for Mr. Flanigon. Can you share with the parties any
14 FTA efforts to establish a similar advisory committee and how
15 would FTA use such a body?

16 MR. FLANIGON: Sure. In fact, one of the elements of
17 the -- or one of the outputs, I guess, of the work group that the
18 Secretary asked -- the Deputy Secretary -- to form up where we had
19 all the modes of transportation, FAA, Federal Motor Carriers, the
20 FRA, et cetera, along with us looking at transit safety, in
21 particular rail transit safety. A decision was made that even in
22 the, we hope, unlikely event that Congress did not pass the
23 legislative proposal, that it would be useful to FTA to have such
24 an advisory committee. And so we've been working over the last
25 few months to develop a charter and currently there's a Federal

1 Register notice out seeking nominations to the Transit Rail
2 Advisory Committee for Safety, TRACS.

3 And we will look to that group, once we get it up and
4 running, to give us stakeholder advice and we would look to having
5 transit agencies, transit associations, unions, other stakeholder
6 groups, perhaps manufacturers or others, who could kind of give us
7 a representative sample of the stakeholder opinions and thoughts
8 and advice, so that whatever decisions we make, whether it's going
9 forward with new regulations or revising existing regulations,
10 that we do that in as an informed way as possible.

11 This committee will comply with something called the
12 Federal Advisory Committee Act, which sets certain federal rules
13 on, you know, open meetings and representative membership and no
14 lobbyists involved and that sort of thing. So we're very hopeful
15 that that will be up and running soon and then we'll start getting
16 good information from the industry to inform our decisions.

17 UNIDENTIFIED SPEAKER: Thank you. And that concludes
18 our questions.

19 CHAIRMAN SUMWALT: Thank you. Are there any follow-up
20 questions from the parties?

21 (No response.)

22 CHAIRMAN SUMWALT: Seeing none, I've also been advised
23 from the Tech Panel that there are no follow-ups, so we'll now go
24 directly to the Board of Inquiry. Mr. Ritter?

25 MR. RITTER: No questions.

1 CHAIRMAN SUMWALT: Dr. Kolly?

2 DR. KOLLY: Just a quick follow-up. Mr. Flanigon,
3 you've stated that the FTA has no regulatory authority to set
4 requirements or standards and that you are engaged in essentially
5 advocacy type efforts in certain areas. I wonder if you could
6 just discuss a little bit about how effective you think those
7 advocacy efforts might be. And for an example, I would say you're
8 advocating, you're setting standards for event recorders. How
9 successful have you been in advocating for the installation of
10 event recorders across the various transit agencies?

11 MR. FLANIGON: Sure. Our former administrator, one of
12 the outreach efforts, advocacy efforts, was to send a dear
13 colleague letter to the industry and encourage that new car
14 purchases, new car procurements would require the installation of
15 an event recorder. And I believe that at that time the numbers --
16 and I'd have to dig this up and get it for you to be exact, but I
17 believe the numbers were at least 80 percent of the railcars being
18 ordered were being ordered with event recorders. And I recall
19 asking the question of the folks from WMATA, if their new railcars
20 were spec'd out with event recorders, and the answer was yes.

21 DR. KOLLY: So that sounds like, you know, you've been
22 fairly effective in that area. Would you consider across most of
23 your other safety advocacy areas you've been equally as effective?

24 MR. FLANIGON: I don't know if we've been quite that
25 effective. It depends. I think it probably depends on perhaps

1 the price tag that goes along with the item. That may be a
2 variable. But I think generally we, you know, as a funding
3 agency, people do tend to listen sometimes.

4 DR. KOLLY: And kind of along that line, do you feel
5 that the transit agencies in general have a more or less similar
6 acceptance rate or are there significant differences you see
7 between different transit agencies in your efforts?

8 MR. FLANIGON: In terms of --

9 DR. KOLLY: Receptivity to your efforts.

10 MR. FLANIGON: Of course, I'm one of these eternal
11 optimist-type guys, so I tend to think that transit agencies, by
12 and large, want to do the right thing. Certainly, they face some
13 real challenges in the current environment, with the economy
14 having difficulties and a lot of funding sources being reduced.
15 And I don't have any empirical data to support this, but my sense
16 is that there's a strong desire to do the right thing out there.

17 DR. KOLLY: You're mentioning the challenges associated
18 with available funding, that that may influence this decision
19 making. Do you know of any other key issues that might account
20 for some of these problems or some of this reluctance to take on
21 these additional safety suggestions from the FTA?

22 MR. FLANIGON: You know, one of the things I'm very much
23 looking forward to is tomorrow's presentations on organizational
24 change and development. And that would probably be the biggest
25 impediment, is just kind of organizational, institutional inertia,

1 you know, to change and adopt new things. One of the reasons that
2 we think that national regulatory standards will -- are necessary
3 and will really enhance safety is that it kind of takes -- it
4 makes it easier to make the decision to do the right thing if, you
5 know, you've got to do it because the law says you've got to do
6 it.

7 And while I think there's a lot of goodwill out in the
8 country, I think that added horsepower is really what's needed to
9 get where we'd like to go. I guess the other thing I'm
10 particularly intrigued about tomorrow's session, as we, the FTA,
11 begin to look at, you know, if we get this authority, which we
12 hope we will, we really don't want to go down the road of just
13 having voluminous detailed standards. We want to move -- we want
14 to help move the industry in these positive directions. And so
15 how can regulation play the role in providing the framework or the
16 catalyst for the kind of positive changes that we hope will occur?
17 And so that's something I'm very much tuned into tomorrow, so I'm
18 looking forward to that.

19 DR. KOLLY: Thank you. I too am looking forward to
20 those discussions. No further questions.

21 CHAIRMAN SUMWALT: Thank you, Dr. Kolly.

22 And Mr. Dobranetski?

23 HEARING OFFICER DOBRANETSKI: Yes, I have some
24 questions. I'll start with the FRA. Mr. Pritchard, you've been
25 at the FRA for quite some time. Can you recall if any time in the

1 FRA's history that you've been there, that they have ever tried to
2 regulate, investigate or associate themselves with the transit
3 industry?

4 MR. PRITCHARD: Yes, sir, back in 1972 we engaged in the
5 Chicago Transit Administration accidents, CTA down in Chicago. In
6 fact, we did investigate two accidents. One train had fallen off
7 the loop area downtown Chicago and another one was a sun blindness
8 on an engineer out towards O'Hare Airport. And we promptly got
9 sued by the Chicago Transit Administration and we did not have
10 authority and they won.

11 HEARING OFFICER DOBRANETSKI: Can you get closer to the
12 microphone?

13 MR. PRITCHARD: They won.

14 HEARING OFFICER DOBRANETSKI: When you say they won --

15 MR. PRITCHARD: They took us to court and they won. We
16 did not have the jurisdiction to go on mass transit.

17 HEARING OFFICER DOBRANETSKI: Okay. So you don't have
18 the jurisdiction to any oversight of a transit authority?

19 MR. PRITCHARD: That's correct.

20 HEARING OFFICER DOBRANETSKI: I've seen recently in the
21 paper where FRA has taken some action against an organization
22 called Capitol Metro in Texas. Is that a transit organization or
23 is that a commuter rail?

24 MR. PRITCHARD: I'm not aware of that. It must be a
25 commuter rail. It's commuter rail.

1 HEARING OFFICER DOBRANETSKI: It's commuter rail?

2 MR. PRITCHARD: Yes.

3 HEARING OFFICER DOBRANETSKI: Okay, thank you.

4 Mr. Flanigon, you've not been as long at the FTA as some of the
5 recommendations we've made to the FTA, but over the years I know
6 we have made recommendations to the FTA to do certain things, such
7 as require some event records, and generally the responses we get
8 back is that the FTA would certainly like to do that, but they
9 don't have the authorization or regulatory authority to do that.
10 Can you tell us why the FTA has never sought authorization to do
11 some of the things that have been asked of them in the past?

12 MR. FLANIGON: What I could speak to and what I know
13 about is that at one point the FTA did try to implement a safety
14 regulation on the industry and that was the drug/alcohol testing
15 rule and they put that into place and were promptly sued by an
16 organization that objected. And the courts upheld that the
17 prohibition or the statutory limitation that I referenced earlier
18 on regulating the operations of transit agencies extended to
19 things like safety regulation and drug/alcohol testing.

20 HEARING OFFICER DOBRANETSKI: So you did or didn't seek
21 regulatory authority?

22 MR. FLANIGON: The agency did in fact seek regulatory
23 authority. Well, I guess I wasn't involved, so I don't know if
24 the agency sought the regulatory authority or Congress looked at
25 the situation and decided to grant the regulatory authority. But

1 in any case, Congress did need to pass a specific law that
2 exempted the FTA from that statutory limitation to allow the FTA
3 to promulgate regulations on drug/alcohol testing.

4 HEARING OFFICER DOBRANETSKI: So the FTA's regulatory
5 authority is limited just to drug and alcohol testing?

6 MR. FLANIGON: To drug and alcohol testing and to the
7 current state oversight program, which is kind of passed down to
8 the states.

9 HEARING OFFICER DOBRANETSKI: Okay. How do you see the
10 FTA making the transition, if it does go through, from being a
11 funding agency to being a regulatory agency?

12 MR. FLANIGON: Well, one element that will help guide us
13 is using the regulatory advisory committee, the TRACS. The other
14 is that we do have a budget proposal to go along with the request
15 or the legislative proposal on the authority and that would allow
16 us to stand up a cadre of folks to help build this program.

17 HEARING OFFICER DOBRANETSKI: Would this require a major
18 reorganization or a major influx of personnel to become a
19 regulatory agency?

20 MR. FLANIGON: The estimates and what's in the
21 President's budget for FY '11, in terms of headquarter staff, I
22 believe, if I'm remembering the number right, is 30 individuals
23 for headquarters. And it would also, we believe, entail a
24 reorganization of the FTA with a safety office that would report
25 up to the administrator.

1 HEARING OFFICER DOBRANETSKI: Okay, thank you.

2 Mr. Chairman, I have no further questions.

3 CHAIRMAN SUMWALT: Thank you. And I too have no
4 questions. So it's been a very productive day and I want to thank
5 the witnesses. When we end this session very shortly, you will be
6 excused. I thank you for your participation, and thank you for
7 the parties and for the NTSB personnel involved. Mr. Flanigon,
8 you mentioned high-reliability organizations and there's an
9 article in today's USA Today that quotes APTA.

10 It's saying that more than four billion passengers a
11 year travel on our nation's subway and light rail systems and I
12 think, because of that, it makes the case very strongly that I
13 don't think anybody in this room would disagree that it's very
14 important that those organizations, those agencies, be able to
15 ensure safe, reliable and quality performance over a long period
16 of time.

17 And by definition, a high-reliability organization,
18 which is what we will talk about tomorrow, by definition, a high-
19 reliability organization is a robust organization with a strong
20 safety culture that has a high probability of achieving safe,
21 reliable and quality performance over a long period of time. And
22 I think that's what we want our rail transit systems to do and
23 that's what we want our nation's transportation system to do, not
24 just focusing on rail. But we at the Safety Board are interested
25 in all modes of transportation. So I think that tomorrow will be

1 very interesting and I look forward to it.

2 Our plan is to start tomorrow at 8:00 in the morning.
3 Now, Washington is perhaps, depending on who you -- okay, well,
4 here's what I'd like to do. I want to start at 8:00. If by
5 chance the snow impacts things and the federal government is
6 running a two-hour delay tomorrow -- and you'll know that by
7 watching the TV or going to the OPM website, but more than likely
8 the TV is the best place to get the information. If you learn
9 that the federal government is on a two-hour delay tomorrow, then
10 we'll start at 10:00. We'll start two hours after 8:00. That's
11 why I want to start at 8:00, so that we can at least start
12 by 10:00.

13 Yeah, I know, I'm a bureaucrat and that's the logic. So
14 hopefully we'll see you at 8:00 in the morning. If we don't see
15 you at 8:00, we'll see you at 10:00. I do think, regardless of
16 the start time, we will be through by lunch tomorrow. I just
17 didn't say what time lunch will be.

18 (Laughter.)

19 CHAIRMAN SUMWALT: But we are adjourned. Thank you very
20 much.

21 (Whereupon, at 5:33 p.m., the hearing in the above-
22 entitled matter was adjourned, to be reconvened on the following
23 day, Thursday, February 25, 2010 at 8:00 a.m.)

24

25

CERTIFICATE

This is to certify that the attached proceeding before the
NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: PUBLIC HEARING ON THE COLLISION OF TWO
WASHINGTON METROPOLITAN AREA TRANSIT
AUTHORITY TRAINS NEAR FORT TOTTEN
STATION, WASHINGTON, D.C., JUNE 22, 2009

PLACE: Washington, D.C.

DATE: February 24, 2010

was held according to the record, and that this is the original,
complete, true and accurate transcript which has been compared to
the recording accomplished at the hearing.

Dan Hawkins
Official Reporter